

The History of Hong Kong Stamp Duty and its
Influence on the Modern Law

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Abstract

In 1866, the Hong Kong colonial government imposed stamp duty on written instruments. The tax was imposed for 132 years during the British rule of Hong Kong and was retained by the Hong Kong Special Administrative Region after the 1997 transfer of sovereignty over Hong Kong from Britain to China. Despite the vast number of textbooks written on the application of the contemporary Hong Kong stamp duty law, little is known about the driving forces that lay behind the first imposition of stamp duty in Hong Kong and the forces that shaped its development in the nineteenth and twentieth centuries. Little is revealed by the successes or failures of various stamp duty laws enacted to fulfil these forces. In order to deal with the knowledge gaps, this study uses the legal historical method and the legal comparative method to reconstruct an interpretation of stamp duty legal history for investigation. The study reveals that the first imposition of the tax was driven by the primary imperative to raise revenue followed by a secondary demand for social equity. It also reveals that the provisions of the first Hong Kong stamp duty legislation were influenced by local political demands occasioned by events leading to the American Revolution in the eighteenth century. The study demonstrates that, along with the dominant financial impetus, other social, economic, political, sustainability and pragmatic forces also shaped the stamp duty system under British rule. Social and economic forces supplemented the financial impetus from the 1960s onwards as key drivers for stamp duty legislative change. The study examines the explicit and discerned objectives of various historical Hong Kong Stamp Ordinances in terms of the actual outcomes. The analysis reveals many novel lessons in stamp duty system design. The study also demonstrates that Hong Kong should not abolish its stamp duty system at the present time.

Contents

CHAPTER 1	INTRODUCTION	9
1.1	AIMS OF THE STUDY	9
1.2	RESEARCH QUESTIONS	10
1.3	RESEARCH METHODOLOGIES	11
1.4	ORGANISATION AND STRUCTURE	15
1.5	BACKGROUND	15
1.6	SIGNIFICANCE OF THE STUDY	18
1.7	SCHOLARSHIP	26
1.8	SOURCES	29
1.9	REFERENCING MATTERS	36
CHAPTER 2	THE ORIGINS OF HONG KONG STAMP DUTY	37
2.1	THE DRIVING FORCES BEHIND THE INTRODUCTION OF HONG KONG STAMP DUTY	38
2.1.1	<i>Early colonial Hong Kong and its revenue needs</i>	38
2.1.2	<i>Non-revenue demands for the introduction of the Hong Kong Stamp Ordinance</i>	48
2.2	OTHER CIRCUMSTANCES INFLUENCING STAMP DUTY LAW	55
2.2.1	<i>Stamp duty was the only viable choice</i>	55
2.2.2	<i>Why stamp duty was not introduced earlier into Hong Kong</i>	60
2.2.3	<i>Early colonial social structure influencing stamp duty law</i>	65
2.3	THE BRITISH ORIGIN	68
2.3.1	<i>The introduction of stamp duty into Britain</i>	69
2.3.2	<i>Structure of the first Hong Kong Stamp Ordinance</i>	71
2.3.3	<i>Chargeable instruments of the first Hong Kong Stamp Ordinance</i>	73
2.3.4	<i>The initial regulations relating to jurisdictions subject to tax</i>	83
2.3.5	<i>Duty computation methods</i>	85
2.3.6	<i>Methods of collection</i>	92
2.3.7	<i>The prosecution protection mechanism and assessment appeal process safeguards deficiency</i>	99
2.3.8	<i>Introduction of rules to counter stamp duty noncompliance</i>	111
2.4	THE AMERICAN STAMP ACT 1765	118
2.4.1	<i>The introduction of American Stamp Act 1765</i>	120
2.4.2	<i>The American Stamp Act's impact on Hong Kong's constitutional development and fiscal policy</i>	122
2.5	CONCLUSION	127

CHAPTER 3 PRIMARY IMPERATIVES DRIVING THE DEVELOPMENT OF HONG KONG

STAMP DUTY	131
3.1 INTRODUCTION	131
3.2 THE CLASSIFICATION OF STAMP DUTY CHANGES	133
3.3 FINANCIAL IMPERATIVES.....	134
3.3.1 Governor Sir Richard MacDonnell's duplicity.....	134
3.3.2 Governor John Pope Hennessy's arrangements to increase stamp revenue.....	142
3.3.3 Hong Kong's first revenue-driven comprehensive stamp duty reform	147
3.3.4 Meeting revenue exigency caused by cessation of opium by dealing with both stamp duty structure and mechanism	155
3.3.5 Meeting revenue demand in Hong Kong's most disastrous year by dealing with the stamp duty structure.....	157
3.3.6 Law that failed to double stamp duty revenue as projected.....	162
3.3.7 Law that efficaciously doubled stamp revenue.....	164
3.3.8 Unwarranted exemption that caused revenue depletion.....	172
3.3.9 Stamp duty law to capture tax revenue from capital gains.....	174
3.3.10 The merit of third party collection mechanism.....	179
3.3.11 Financial disappointment on significant stamp duty increase on asset goods	181
3.3.12 Financial accomplishment on significant stamp duty increase on asset goods	185
3.3.13 Was financial imperative the most influential driver for Hong Kong stamp duty development?	186
3.4 SOCIAL IMPERATIVES	187
3.4.1 The issue of mui-tsai.....	188
3.4.2 Opium	189
3.4.3 Inter-war period.....	192
3.4.4 British Military Administration's pragmatic stamp duty proclamation.....	192
3.4.5 Stamp duty policy to encourage entry level private home ownerships.....	195
3.4.6 Stamp duty changes to support Britain's secret mission.....	199
3.4.7 Hong Kong brain drain and stamp duty policy.....	202
3.4.8 The relative importance of social imperatives in driving Hong Kong stamp duty development.....	204
3.5 ECONOMIC IMPERATIVES.....	205
3.5.1 Non-protectionist tax policy confirmed.....	206
3.5.2 Control inflation	208
3.5.3 Less is more.....	209

3.5.4	<i>Hong Kong's economic development into a financial centre.....</i>	215
3.5.5	<i>Identification of the third most influential imperative that drove the Hong Kong stamp duty development</i>	219
3.6	CONCLUSION	219
CHAPTER 4 SECONDARY IMPERATIVES SHAPING THE HONG KONG STAMP DUTY PROGRESSION.....		225
4.1	INTRODUCTION	225
4.2	SUSTAINABILITY IMPERATIVES.....	225
4.2.1	<i>An extension of convenience</i>	227
4.2.2	<i>Comprehensibility of stamp duty law</i>	231
4.2.3	<i>Specific problems of sustainability: jurisdiction to tax</i>	242
4.2.4	<i>Procedural developments in countering noncompliance.....</i>	247
4.2.5	<i>Taxpayers' protection</i>	268
4.2.6	<i>Relief and exemption</i>	274
4.2.7	<i>The relative importance of sustainability as a driver for stamp duty changes</i>	276
4.2.8	<i>The general threats to stamp duty system sustainability.....</i>	278
4.3	POLITICAL IMPERATIVES	288
4.3.1	<i>Stamp duty and Hong Kong constitutional development.....</i>	288
4.3.2	<i>The importance of skilful politics and procedural justice.....</i>	291
4.3.3	<i>Delayed response to the Colonial Office's inquiries.....</i>	293
4.3.4	<i>Finance Committee inauguration</i>	295
4.3.5	<i>The creation of trust.....</i>	296
4.3.6	<i>Restriction of legislative time.....</i>	298
4.3.7	<i>The power of consultation</i>	302
4.3.8	<i>British stamp duty law as precedent to gain acceptance</i>	311
4.3.9	<i>Political changes to encourage stamp duty innovation.....</i>	313
4.3.10	<i>The relative importance of political imperatives in directing Hong Kong stamp duty development.....</i>	318
4.4	PRAGMATIC IMPERATIVES.....	319
4.4.1	<i>Stamp duty as a tool to institute fiscal accountability.....</i>	320
4.4.2	<i>Stamp duty as an internal control device.....</i>	324
4.4.3	<i>The least powerful motivator for Hong Kong stamp duty advancement</i>	324
4.5	CONCLUSION	325
CHAPTER 5 CONCLUSION		328
5.1	HOW THE HONG KONG STAMP DUTY ACHIEVED ITS MODERN FORM	328
5.2	LESSONS AND PITFALLS FROM HISTORY.....	338
5.3	THE FUTURE OF HONG KONG STAMP DUTY.....	343

APPENDICES	351
BIBLIOGRAPHY.....	378

Tables

Table 3.1:	Comparison of stamp duty rates for bills of exchange, 1866–1868	137
Table 3.2:	Stamp revenues, 1884–1888	149
Table 3.3:	Stamp revenues, 1920–1922	165
Table 3.4:	Analysis of stamp duty collections for contract notes – two years to 31 March 1962	180
Table 3.5:	Analysis of 1967 stamp duty marginal relief for conveyances	198
Table 3.6	Total stamp duty revenues and Stamp Office personnel from 1976/77 to 1980/81	213
Table 3.7	Total stamp duty revenues 1979/80 to 1989/90	214
Table 4.1	Stamp revenues associated with instruments that could be stamped within seven days without penalty, 1895–1896	228

Chapter 1 Introduction

1.1 Aims of the study

The British colonial government introduced stamp duty into Hong Kong in the mid-nineteenth century and since then, for almost 150 years, it has been the major tax in the country's fiscal system. The stamp duty was applied as a tax on documents, and worked in tandem with house rates in the nineteenth century as the means whereby the colony ensured its financial survival and development. The stamp duty policy was formulated as a management strategy to control and develop the multi-cultural colony and ensure its self-sufficiency. The structure of the stamp duty mechanism and the rates at which it was applied reflected not only the financial requirements but also the economic, social and political needs of the colony. Thus the purpose of this study is to investigate the historical development of stamp duty in Hong Kong, to understand the underlying imperatives that gave it shape and substance and to focus on its incidence and implications for Hong Kong, drawing conclusions as to its efficacy and its potential for the future.

This study examines Hong Kong's system of stamp duty under British rule during 1841–1997, with three principal aims:

1. To provide a detailed explanation of how the Hong Kong stamp duty system achieved its modern form just before the transfer of sovereignty over Hong Kong from the United Kingdom to the People's Republic of China.
2. To assess the historical experience to strengthen the design of the system in order to raise revenue more efficiently, effectively and equitably whilst at the same time promoting social development, economic growth and other objectives as envisioned by the government.

3. To indicate the future path for stamp duty in Hong Kong, whether embellished, maintained or abolished, and when considered in light of Hong Kong's historical background, present circumstances and foreseen contexts.

1.2 Research questions

The principal aims will be achieved by focusing on the following specific research questions:

1. Was the Hong Kong stamp duty system intentionally and thoughtfully conceived in order to achieve any predetermined social, economic, political and other outcomes, or was it simply a tool of the government's need to raise revenue with no regard for the subject matter of its charge? What were the imperatives that shaped the stamp duty system into its modern form and did the nature and importance of the imperatives change as Hong Kong progressed?
2. What were the associated historical and ideological forces that enabled the Hong Kong stamp duty system to evolve into its modern form whilst accomplishing the imperatives identified under Research Question 1?
3. How far were the personalities and qualities of individual Governors and other senior bureaucrats material in shaping the Hong Kong stamp duty system?
4. How far has the historical development of Hong Kong stamp duty been successful in achieving the various predetermined policy outcomes, and what are the lessons to be learned from this process?
5. What are those features of the Hong Kong stamp duty system that contribute to its success or failure?

6. What are the undesirable provisions of the modern Hong Kong stamp duty system? Are such provisions the surviving remnants of the historical evolution of the stamp duty system having become ingrained yet the original historical reason for their existence has been surpassed and reform made difficult?

1.3 Research methodologies

In order to achieve the aims, this study adopts an eclectic approach.¹ Law is the home discipline and the principal emphasis. Essentially, the study consists of an historical analysis of the law related to Hong Kong stamp duty (as it was first conceived in Hong Kong in the nineteenth century and developed till the reversion of sovereignty in 1997) and an attempt to explain why the law was as it was. The eclectic approach focuses on the nexus between the changes in the stamp duty legislation with the financial imperatives, social, economic and political forces that shaped the law.

The eclectic approach also informs how the Hong Kong stamp duty law was transformed to solve a range of essentially administrative problems.² These problems include the need to improve accessibility to stamp duty regulations, to improve collection procedures, to provide safeguards to taxpayers, to counter evasions and to attend to other pragmatic government administrative problems that were not related to stamp duty.

The following research methods will be employed to complement the eclectic approach:

1. Legal-historical method;
2. Legal-comparative method.

Legal-historical method

The legal-historical method adopted for this study consists of identifying, evaluating, synthesising, organising and analysing a variety of textual sources.³

¹ Margaret Lam and Andrew Lymer, 'Producing Good Taxation Research' in Lam Margaret and others (eds) *Taxation: An Interdisciplinary Approach to Research* (Oxford, Oxford University Press 2005), 281.

² Ibid 283–84.

³ See section 1.8.

After arranging the information into a logical and chronological format, the evidence will be analysed in pursuit of themes and patterns relevant to the stated research questions, in due course fulfilling the research aims.

To illustrate, one of the objectives of the legal-historical method is to provide interpretational history which constructs the legal development with facts and historical events and, at the same time, seeks to establish and evaluate relationships between the law and those facts and events. In other words, the intention is to knit together the historical black letter law development of the Hong Kong stamp duty and its administration with prevailing factors such as the social, political, economic conditions as well as the characters and qualities of the Hong Kong senior officials in charge of stamp duty policies, in order to provide an accurate and developed account of how stamp duty law has evolved through the past to the present and why the present system is in force today. The methodology serves to establish the historical relationship between functional substantive law development and a number of influencing factors in terms of the research questions 1 to 3.

Besides contributing to the understanding of how and why the Hong Kong stamp tax system is so shaped, the contextualisation process of the legal historical methodology enables the outcomes of the chosen laws and policies to be measured. Historical arguments can be developed to treat the success(es) or failure(s) of the paths adopted in Hong Kong and lessons can be drawn accordingly. Further, an accurate interpretation of the past legal development in context of the related events will facilitate appropriate future decision-making. In this regard, the legal historical method assists in proposing reform or amendment to the existing law. The methodology assists in drawing conclusions from the historical development posed under research questions 4 to 6.

The application of the legal-historical method requires a number of clear stages in the research process:

1. Establish the date of introduction of the stamp duty legislation in Hong Kong and the dates of any subsequent changes. Critically review the legislation and survey any relevant case law of the prevailing period.

2. Establish the dates of repealing and re-enacting Stamp Ordinances and the consequent changes of any re-enacted Ordinances. Critically review the legislation and survey any relevant case law appropriate to each period.
3. Examine the *Hong Kong Hansard* and other sources to ascertain the reasons why the Stamp Ordinance was introduced and the reasons for subsequent changes. Similarly, examine the *Hong Kong Hansard* and other sources to identify reasons why the original Ordinance or the subsequent legislation was re-enacted. For any re-enacted Ordinance, analyse the consequential changes and the reasons for the changes.
4. Investigate the Hong Kong history of the period before and after the introduction of each Stamp Ordinance to ascertain the social, political, and economic background of the introduction, re-enactments and changes to the Ordinance.
5. Analyse the resulting interpretation of history from the introduction of the stamp duty law to the position at the time of the 1997 reversion of sovereignty to discern patterns and themes and draw conclusions to answer the research questions.

Legal-comparative method

The Hong Kong stamp duty system was introduced by the British colonial power.⁴ The application of the legal comparative method is to understand how similar stamp duty doctrine was developed in Britain, and as that doctrine has been tested empirically, to see what impact it has had in practice. This process is also to ascertain how effective was the historical British stamp duty law and the legal system in dealing with the problems faced by Britain. This does not simply refer to the historical technical doctrinal problems but the related social and economic problems that underlie them, and to see what role other factors

⁴ See section 1.5.

have played in deciding the historical outcomes.⁵ Contrasting the British position with the Hong Kong stamp duty doctrine generates measures to determine a more effective stamp duty law in Hong Kong. Similarities and differences between the historical stamp duty laws in the British and Hong Kong jurisdictions are examined to discern any reforming measures or solutions which were adopted into the modern Hong Kong stamp duty system. This also allows an understanding of the imperfections of the Hong Kong stamp duty system resulting from its historical evolution.

The aim of the legal-comparative method adopted in this study is to draw inspiration for post-1997 Hong Kong stamp duty legal reforms or amendments as well as to foreshadow potential pitfalls in the selection of stamp law policies by the juxtaposition of the historical British legal positions and problems with those historical stamp duty issues in Hong Kong.

The application of the legal-comparative method required a number of clear stages in the research process:

1. Examine the *Hong Kong Hansard* and other sources to ascertain the reasons why the related Stamp Ordinances were enacted.
2. Investigate the corresponding British provisions under the British Stamp Acts. Critically review the legislation.
3. Assess the *British House of Commons Parliamentary Papers* and other sources to ascertain the reasons why the British Stamp Acts were enacted as they were.
4. Compare and contrast local and British stamp duty laws and their respective backgrounds to determine the origins of associated problems.
5. Establish the reasons for the modification(s) and any departure from British tenets.

⁵ Geoffrey Wilson, 'Comparative Legal Scholarship' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh, Edinburgh University Press 2007), 87.

6. Analyse the intuitions and judgements from the mappings and propose answers to the research questions.

1.4 Organisation and structure

The two research methods discussed above are applied throughout Chapters 2, 3 and 4 to deal with the research questions in order to achieve the stated principal research aims.

Chapter 1 sets out the research aims, research methodologies employed, background to the study, the significance of the investigation, and the state of art of the study.

Chapter 2 analyses the driving forces as well as the historical events that led to the introduction of stamp duty in Hong Kong in the nineteenth century.

Chapter 3 identifies and analyses in depth the various primary imperatives and establishes their relative importance in the on-going development of the stamp duty after the introduction of stamp duty in Hong Kong in the nineteenth century under the British jurisdiction through till the 1997 reversion of sovereignty to China.

Chapter 4 identifies and investigates the secondary imperatives that moulded the Hong Kong stamp duty law.

Chapter 5 concludes the investigation by drawing together the key findings from the evidence presented in the body of the thesis, to deal with the principal aims of the study, and to look to the future of the Hong Kong stamp duty.

1.5 Background

The Netherlands was the first country to introduce stamp duty.⁶ In the early 1620's, the Dutch government was hard-pressed for revenue because of the war with Spain. It imposed a number of new taxes and exhausted all traditional possibilities.⁷ To seek new ideas, the Dutch administration offered a large

⁶ Jan M Novotny, 'Stamp Duties' (1955) 15(3) *The Journal of Economic History*, 289.

⁷ Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 286.

reward for anyone who could devise a new, non-oppressive and practical form of taxation.

Johannes van den Brooks, a revenue collector, responded that he had invented a way to obtain revenue that would not be burdensome to the citizens. He kept his newly devised tax secret till the government promised to reward him with an annual salary increase of 3,000 guilders – a vast amount in the fifteenth century. He submitted his plan and on 13 August 1624, the world's first ever revenue stamp act was adopted. The new tax was collected by embossing a special seal on selected legal documents. By 1635, the tax now widely known as stamp duty was extended to all seven provinces of the Netherlands. The stamp duty was adopted within a few decades by neighbouring countries, notably Britain, Spain, France and Austria.⁸ Britain first adopted stamp duty in 1670.⁹ Besides imposing stamp duties on written instruments, British governments have also levied stamp duties on physical objects such as quack medicines,¹⁰ hair powders,¹¹ perfumes,¹² cards,¹³ dice,¹⁴ hats,¹⁵ gloves,¹⁶ mittens¹⁷ and many other physical items.¹⁸

British possession of the Hong Kong Island began when Commodore Sir Gordon Bremer of the Royal Navy, acting under instructions of Captain Elliot (the British Plenipotentiary in China and Chief Superintendent of China Trade), occupied the island on 26 January 1841, in the course of the First Anglo-Chinese War (1840–1843). The Hong Kong Island formally became a British

⁸ Jan M Novotny, 'Stamp Duties' (1955) 15(3) *The Journal of Economic History*, 289; Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 290.

⁹ British Stamp Act 1670 (22 & 23 Car 2 c 9); Edward Hughes, 'The English Stamp Duties, 1664–1764' (1941) 56(222) *The English Historical Review*, 234; Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 287.

¹⁰ British Stamp Act 1783 (23 Geo 3 c 62); Chantal Stebbings, 'Tax and Quacks: The Policy of the Eighteenth-Century Medicine Stamp Duty' in John Tiley (ed), *Studies in the History of Tax Law vol 6* (North America, Hart Publishing 2013), 283. Proprietary medicines were popularly known as quack medicines. They refer to medicines sold by unqualified entrepreneurs. These medicines with secret formulas were sometimes useless and often hazardous.

¹¹ Duty on Hair Powder Act 1795 (26 Geo 3 c 49).

¹² Ibid.

¹³ Taxation Act 1711 (10 Anne c 18); Stamp Duties on Card and Dice Act 1828 (9 Geo 4 c 18).

¹⁴ Ibid.

¹⁵ Duty on Hats Act 1796 (36 Geo 3 c 125).

¹⁶ Glove Duties Act 1785 (25 Geo 3 c 55).

¹⁷ Ibid.

¹⁸ Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 284–85.

colony on 26 June 1843 with the conclusion of the Treaty of Nanking.¹⁹ When Britain again defeated the Chinese Qing government in the Second Anglo-Chinese War (1856–1860), the Qing government ceded the Kowloon peninsula.²⁰ It was the southern tip of Hsin An county on the Chinese Mainland across the harbour from the Hong Kong Island. In 1898, the Japanese defeated the Qing government in the Sino-Japanese War (1894–1895); the British government took the opportunity to lease for ninety-nine years from China that part of Hsin An county north of Kowloon and south of the Sham Chun River including 235 adjacent islands. The lease for the New Territories expired on 30 June 1997.²¹ Hong Kong Island, Kowloon Peninsula and the New Territories are collectively known as Hong Kong. The Chinese Communist government resumed sovereignty of Hong Kong on 1 July 1997.

The Hong Kong stamp duty system was introduced by the British colonial government in Hong Kong in the nineteenth century and was retained by the Hong Kong Special Administrative Region government after the 1997 hand-over. During the 150 years of British administration, numerous reforms and amendments were made to the legislation and related practices to ensure the laws were suitable for local conditions. The end result is an independent set of stamp duty rules with prominent characteristics. It is notable that from its introduction till the British left in 1997, there was no attempt by the colonial government to levy Hong Kong stamp duty on objects similar to Britain's practice in earlier times. As such the historical discussion in this study is limited to the charge on written documents only.

Today, most countries levy stamp duty only on documents as the practice of imposing stamp duties on physical objects had disappeared completely. Furthermore, the number of documents subject to the charge has been greatly reduced. The principal modern documents²² subject to stamp duty are

¹⁹ Steve Tsang, *Democracy Shelved: Great Britain, China, and Attempts at Constitutional Reform in Hong Kong 1945–1952* (Hong Kong, Oxford University Press 1988), 1.

²⁰ G B Endacott, *A History of Hong Kong* (Hong Kong, Oxford University Press 1973), 93.

²¹ Ibid 261–62; Steve Tsang, *Democracy Shelved: Great Britain, China, and Attempts at Constitutional Reform in Hong Kong 1945–1952* (Hong Kong, Oxford University Press 1988), 1.

²² Some of the chargeable documents based on information extracted from various country tax profile guides published by KPMG in 2013, country master tax guides published by CCH in 2013 and the online information published by the country tax authorities accessed on 25 April 2014 are: Hong Kong: conveyances of immovable property, leases of immovable property,

conveyances of immovable property, leases of immovable property, instruments for the sale and purchase of stock, agreements for the transfer of taxable assets as determined by the respective legislations of different countries. Usually, a physical stamp (a revenue stamp issued by the government) is attached to the document and endorsed to indicate that stamp duty has been paid. Another practice is for a stamp to be impressed onto the document by the tax authority with the tax officer's endorsement. Modern versions of the tax no longer require an actual stamp or impressed stamp but are collected instead by electronic means. For example, Section 19(1E) of the current Hong Kong Stamp Ordinance²³ stipulated that even if the transfer of Hong Kong stocks is effected by electronic means in a recognised clearing house, the transaction shall be deemed to be a sale and purchase of Hong Kong stock and thus subject to Hong Kong stamp duty. The stock exchange is deemed to be the agent effecting the sale and purchase and thus has the responsibility of ensuring that stamp duty has been paid. In practice, stamp duty on such scripless²⁴ trading activities will be paid through the Hong Kong stock exchange via its computer trading system.²⁵

1.6 Significance of the study

The fiscal history itself is important in its own right. Tax legislation profoundly affects a nation's prosperity or, indeed, its decline. For example, the economic decline of the Netherlands in the seventeenth century was due to their tax system in which heavy excise duty overburdened the country's commerce and trade. The British rose to become a superpower because they managed their

instruments for sale and purchase of stock, bearer instruments. Taiwan: cash receipts, contractual agreements for job and task, contracts in relation to real properties submitted to the government for registration, conveyances of immovable property. South Korea: instruments for sale and purchase of stock, agreements on transferred of taxable assets such as immovable property, aircraft, motor vehicle, club membership and others. Japan: conveyances of immovable property, agreements on transfer of taxable assets such as mining right, intangible property right, vessel, aircraft, profit-making business and others, contractual agreements for job and task, promissory notes, bill of exchanges, share certificates, subscription certificates, bonds, beneficiary certificates, merger agreements, incorporation documents, deposit certificates, bills of lading, insurance certificates, letters of credit, trust documents, receipts, bank books. Singapore: conveyances of immovable property, leases of immovable property, instruments for sale and purchase of stock.

²³ Hong Kong Stamp Ordinance, c 117 (Originally No 31 of 1981).

²⁴ Securities trading where only book entries represent the security holding and settlement, and no physical certificate is issued or exchanged.

²⁵ See further, The Hong Kong Exchange, 'Transaction cost'

<www.hkex.com.hk/eng/market/sec_tradinfo/trancost.htm> accessed 25 February 2014.

tax system effectively in the eighteenth and nineteenth centuries.²⁶ In the twentieth century, thriving economies like Singapore and Taiwan pursued a low tax strategy and used tax exemptions to stimulate economies and to attract foreign investments. The ideology was that people would work harder if they were allowed to keep the fruits of their labour.²⁷

Furthermore, tax history is not merely the history of the system but also a prism through which the history of a jurisdiction may be viewed from a different perspective. The development of the taxation system within a jurisdiction's social, political, economic and ideological context facilitates the exploration of the historical advancement of the corresponding society, and may shed a novel light on the development process.

Today, the Hong Kong tax system as a whole is one of the most effective systems in the world. The taxpayers' administrative and compliance burdens are exceptionally light compared to some other jurisdictions and yet the Hong Kong government usually maintains a significant surplus and generates impressive reserves.

In this regard, the Hong Kong stamp duty system contributes significantly to the fiscal well-being of Hong Kong. The Hong Kong government collected HK\$51 Billion and HK\$44 Billion stamp duty revenue in the fiscal years 2010/11 and 2011/12 respectively, which accounted for 17.6% and 13.3% of the total Hong Kong government's revenue.²⁸ Certainly, stamp duty has aided Hong Kong's fiscal surplus tremendously and its significance to Hong Kong cannot be understated. It is certainly an important modern tax for Hong Kong and one with a long history.

²⁶ Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilization* (2nd edn, Lanham, Maryland, Madison Books 1999), 268.

²⁷ *Ibid* 424.

²⁸ Hong Kong Census and Statistics Department, 'Hong Kong Government Revenue and Expenditure under the General Revenue Account (Table 192) for 2010/11 and 2011/12' <www.censtatd.gov.hk/hkstat/sub/sp110.jsp?tableID=194&ID=0&productType=8> accessed 21 April 2014.

Empirical stamp duty research²⁹ conducted by Rao, drawing data from Australia, Denmark, England, Hong Kong, Ireland, Japan, Korea, Macau, Mainland China, Singapore and Thailand from 1994 to 2004 demonstrated certain results. The empirical research measured a country's ability to collect stamp duty revenue by comparing the total yearly stamp duty collected to the nation's annual Gross Domestic Product (GDP) as well as the nation's annual total governmental revenue received. There were two findings. First, Hong Kong was only ranked after Australia and Denmark in terms of the total stamp duty collected as a proportion of its GDP. Second, Hong Kong was ranked first in terms of stamp duty collected as a proportion of its total governmental revenue.³⁰ The statistical research conducted by Rao, further found that factors dictating the stamp duty revenue collection ability of a nation are not related to the nation's economic fluctuations and structure, but moderately related to its degree of commercial development and highly related to the sophistication of its stamp duty law and legislation in practice.

Together, these results suggest that the Hong Kong stamp duty law and legislation is significant for the volume of its revenue collection. Based on the success of the Hong Kong substantive stamp duty law compared to other countries, a further analysis of the historical development of the Hong Kong stamp duty's legal structure and substantive law will help to gain new perspectives on good public policies and law. This analysis will inspire future debates about black letter stamp duty legislation in Hong Kong as well as in other countries.

The local debate about Hong Kong stamp duty is topical. The Hong Kong British colonial government had been undemocratic. Even after World War II when other British colonies such as Malaysia, Singapore and India called for government elections, Hong Kong remained indifferent. The reasons for this phenomenon include: the local office bearers and Chinese leaders were unwilling to change the keystone of what was proving to be a winning formula for the Hong Kong economic miracle in the few decades after the war; the local Chinese (who were, and remain, the majority of the population) expected from

²⁹ Lixin Rao 饒立新, *Zhongguo Yin Hua Shui Yan Jiu* 中國印花稅研究 [Study on Stamp Duty of China] (Beijing, Zhongguo Shui Wu Chu Ban She 2009).

³⁰ Ibid 124.

the British Governor more or less what they would expect from a father (a traditional Chinese father was perceived to be undemocratic and ruled the family via traditional Confucian values). In their perception, a Hong Kong Governor was a *fu-mu-kuan* – ‘fatherly and motherly like official’ – whose good intentions should not be questioned.³¹ The major democratic breakthrough came late when the first member of the Hong Kong legislative council was elected in 1991 (just six years before the handover of Hong Kong to China).

According to Hans-Hermann Hoppe’s theory, democracy may lead to heavy taxation and high public spending since democratically elected politicians are only temporarily in office. Since they are not the owners of the resources at their disposal, they have a strong incentive to spend money on projects and social welfares that make them popular, with little regard for the future. The financial burden created along the way will then need to be treated by their successors who in turn may resort to heavy taxation and debts.³²

The Hong Kong government has always been undemocratic and that has been the case since the days of its first Governor. Because of the theory of a positive correlation between democracy and tax increments, the colonial government’s low tax policy and undemocratic nature encountered little criticism.

The political situation changed with the 1997 handover. Directly elected Legislative Councillors began to press for universal suffrage³³ and other

³¹ Steve Tsang, *Democracy Shelved: Great Britain, China, and Attempts at Constitutional Reform in Hong Kong 1945–1952* (Hong Kong, Oxford University Press 1988). Tsang’s book is a good published source of information for constitutional developments in post-war Hong Kong.

³² For example, see Hans-Hermann Hoppe, *Democracy—The God That Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order* (New Brunswick, Transaction Publishers 2001), 82–89.

³³ In accordance with the Basic Law of Hong Kong, the Chief Executive is nominated and elected by an election committee which consists of representatives from commercial, professional, social and political sectors. Pro-democracy activists called this a “small circle election” and demanded that it should be replaced by universal suffrage. Under colonial rule, the Queen or the King of Britain appointed the Governor. There was no democratic election. However, the British pushed for democratisation of Hong Kong when they were departing. As a result, Beijing agreed, as stated in the Basic Law, the ultimate aim would be the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee. The Standing Committee of the 10th Chinese National People Congress confirmed that universal suffrage might be implemented in the 2017 Hong Kong Chief Executive election subject to the nomination of the candidates by the nominating committee. The pan-democratic camp of Hong Kong, however, objected to the screening of candidates by the nominating committee and continued to protest and rally.

rights.³⁴ It is clear that the population (or at least the Legislative Councillors) in Hong Kong no longer esteemed the Chief Executive (head of government in Hong Kong similar to the Hong Kong British Lieutenant Governor before 1997) as *fu-mu-kuan*. In order to win over voters, some Councillors advocated more socialistic policies and vehemently demanded more welfare spending.

In the budget of 2014, the Chief Executive C Y Leung announced that he would spend prodigiously and roll out a massive poverty-relief package that would see recurrent government spending soaring by at least HK\$10 billion a year.³⁵ Hong Kong's Financial Secretary John Tsang then forewarned of the risk of the budgetary surplus becoming a deficit after the Chief Executive's speech:

Reserves will not be exhausted in the current government's term but that does not mean such a day is far off. It was reasonable to worry about the recurrent expenditure growing too fast, as that would have a "snowball effect" and government efforts to streamline spending may prove futile. Hong Kong then would need to hike taxes or borrow money, as fiscal reserves would be exhausted. I will try my very best to ensure there is a surplus in the rest of my term so as to keep reserves up and hence leave more time to tackle structural problems.³⁶

The consequence of a high public spending policy is the need to amass revenue. There are on-going debates on widening the tax base in Hong Kong that is traditionally labelled as narrow.³⁷ Many public debates have been

³⁴ Sin Tze Ker, 'Struggle for Universal Suffrage in Hong Kong' *The Strait Times* (Singapore 15 April 2014) < <http://lkyspp.nus.edu.sg/news/struggle-for-universal-suffrage-in-hong-kong/> > accessed 2 September 2016. The report stated the political leaders in Hong Kong are struggling to find some workable compromise between pro-democracy groups and pro-Beijing politicians that will allow the Hong Kong Legislative Council to pass a reform Bill on universal suffrage acceptable to Beijing. Without it, the increasingly frequent protests and demonstrations seen in the territory in recent years will only increase. The political scene in Hong Kong has been increasingly chaotic lately. Protest rallies and marches have become the norm. The working class took the opportunity to protest for basic housing needs while the middle class protest about rising living costs and stagnant income. Young school and college leavers march to air their grievances about job hunting. Protesters also cried for press freedom. And pro-democracy politicians have been exploiting the situation, attributing the chaos to an "unfairly elected Chief Executive" who does not have a mandate from voters.

³⁵ Mary Ma, 'Welfare Comes of Age with Leung' *The Standard* (Hong Kong 15 January 2014) < www.thestandard.com.hk/section-news.php?id=141517 > accessed 2 September 2016.

³⁶ Imogene Wong 'Beware of reckoning, Tsang Warns' *The Standard* (Hong Kong 20 January 2014) < www.thestandard.com.hk/section-news.php?id=141686 > accessed 2 September 2016.

³⁷ Financial Services and the Treasury Bureau, '2011 KPMG Australia Report for the Advisory Committee on New Broad-based Taxes for the Finance Bureau of the Government of Hong Kong Special Administrative Region' <

conducted on the probable introduction of a goods and services tax. The government also has the option to increase income tax and stamp duty rates.

With such an option to change the Stamp Ordinance to enhance revenue, the historical evolution of the Hong Kong stamp duty law requires investigation to ascertain to what extent the success of the Hong Kong system is the result of historical initiatives. So far, it seems that the system was successful in ensuring revenue to support public finance. An understanding of why and how stamp duty law was developed during the colonial years and the prevailing cultures and values of those days will certainly help the current government face practical problems in the coming years. An informed understanding of the historical debates, critical turning points, patterns and end results of the previous policies, constitutes a secure guide for any stamp duty reform in the future. In the event that government policy makers decide to amend the current legislation to increase revenue to defray the imminent increase in public spending, the result of this study will facilitate appropriate decision-making in creating an acceptable, sustainable and yet effective and efficient future for Hong Kong stamp duty policy and law.

On the one hand the Hong Kong stamp duty system was an indispensable source of revenue. On the other hand there were complaints about the stamp duty system, both historically and currently, which may lead to their abolition, and are usually categorised in the following terms: excessively complicated; difficult to enforce; unfair; damaging to the economy.³⁸

In particular, with regard to the perceived unfairness of stamp duty, in an article examining the legitimacy of imposing the new Hong Kong Special Stamp Duty

www.fstb.gov.hk/tb/en/docs/btreport_annex_hktaxbasestudy.pdf> accessed 10 April 2014. In the July 2001 report prepared by KPMG Australia, in conjunction with KPMG Hong Kong, for the Advisory Committee on New Broad-based Taxes for the Finance Bureau of the Government of Hong Kong Special Administrative Region, the report concluded that Hong Kong's tax base was narrow in composition because of its heavy reliance on a limited range of taxes, such as profits tax and property-related taxes. In the June 2007 final report on public consultation on tax reform conducted by the Finance Bureau of the Government of Hong Kong Special Administrative, it concluded that the public generally agreed that there were deficiencies in Hong Kong's narrow tax base, and was more receptive to the need to broaden our tax base. The public also broadly agreed that a more stable revenue base would enhance Hong Kong's fiscal health. As at today, no new taxes had been introduced in Hong Kong since the dates of the stated reports.

³⁸ Joel Slemrod and Jon Bakija, *Taxing Ourselves: A Citizen's Guide to the Debate over Taxes* (4th edn, Cambridge Massachusetts, United States, MIT Press 2008), 3–7.

in 2012,³⁹ a Hong Kong critic questioned whether the imposition of the regular stamp duty on immovable properties in Hong Kong was fair to begin with. First, it was argued, the stamp duty ‘taxes transactions whether they generate a profit or loss, so in that sense it is unfair.’⁴⁰ Second, it was advocated that ‘stamp duty is just bad policy’ as it was a fractional tax which impeded the efficient allocation of capital and was distortional for a number of reasons. As an illustration of the point, the article argued that under the current Hong Kong stamp duty legislation, other real assets such as antiques, jewellery and art were not subject to stamp duty and this was unfair.⁴¹ In 1989, British critic Nicolas Gibb advocated the repeal en masse of the stamp duty system, as the concurrent imposition of stamp duty with capital gains tax or income tax on the same transaction might lead to unfair double taxation.⁴²

In relation to the rhetoric that stamp duty was bad for the economy, in 1983, the British Parliamentary Secretary to the Treasury John Wakeham (in office 1983–1987) commented on the British stamp duty system: ‘The case is often put that [British stamp duty] is a bad tax which ought to be abolished, because it is a tax on change, and the government seeks to promote change, rather than discourage it.’ Interpreting his words and applying what he said to stamp duties imposed on immovable properties, he argued that the duties levied on houses would inhibit people from improving their living conditions and thus decrease the incentive for them to undertake activities to better themselves and the

³⁹ The Government of the Hong Kong SAR introduced a number of amendments to the stamp duty regime in Hong Kong with the intention of cooling an over-heated property market. Implementing legislation for Special Stamp Duty and Buyer’s Stamp Duty has been passed under the 2014 Stamp (Amendment) Ordinance, No 2 of 2014 which has retrospective effect from 27 October 2012. Essentially Special Stamp Duty was payable on any residential property acquired, either by an individual or a company (regardless of where it is incorporated), and resold within 24 months if the property was acquired between 20 November 2010 and 26 October 2012. The Hong Kong government had extended this period to 36 months if the property was acquired on or after 27 October 2012. Special Stamp Duty was assessed at rates varying from 5% to 20% depending on the period the property was held and was payable in addition to the basic stamp duty.

⁴⁰ Webb-Site Reports, ‘SSD, the Basic Law, and a lesson from Singapore’ < <https://webb-site.com/articles/ssd2.asp> > accessed 14 January 2016; see also Nicolas Gibb, *Duty to Repeal* (London, Adam Smith Institute 1989), 12.

⁴¹ Webb-site Reports, ‘SSD, the Basic Law, and a lesson from Singapore’ < <https://webb-site.com/articles/ssd2.asp> > accessed 14 January 2016.

⁴² In 1989, Nicolas Gibb argued to abolish the British stamp duty system en masse as the system induced a double taxation effect. In Britain, sales of immovable properties were subject to British capital gains tax. Likewise, the profits on share trading would attract British corporation tax on top of the stamp duty charged on the sales and purchases of related shares. In that sense stamp duty could be considered unfair as it caused double taxation. See Nicolas Gibb, *Duty to Repeal* (London, Adam Smith Institute 1989), 9.

economy at large. Stamp duty on immovable properties was also an impediment to foreign companies/foreign talents who may contemplate setting up operations in/relocating to Britain which imposed stamp duties on such immovable assets.⁴³

Similarly, in 1989, British critic Nicolas Gibb put forward Adam Smith's rhetoric to argue for the complete abolition of the British stamp duty system:⁴⁴

All taxes upon the transference of property of every kind, so far as they diminish the capital value of that property, tend to diminish the funds destined for the maintenance of productive labour. They are all more or less unthrifty taxes that increase the revenue of the sovereign, which seldom maintains any but unproductive labourers, at the expence of the capital of the people, which maintains none but productive.⁴⁵

It could be interpreted that Gibb's argument was that stamp duty on immovable properties would affect economic behaviour and thus ruin long run prosperity.

To further support his motion to abolish the British stamp duty system, Gibb pointed out that the abolition of stamp duty in respect of share transactions and other financial dealings would defend London's position as a major financial centre, despite threats from other major European centres such as the Frankfurt and Paris stock exchanges.⁴⁶ Likewise, in Hong Kong recently, a critic said that Hong Kong should abolish its stamp duty on share trading so as to encourage international dealers to trade in the Hong Kong market.⁴⁷

The investigation of the historical development of Hong Kong's stamp duty system permits an assessment of the extent to which these arguments were, and are today, valid in Hong Kong.

⁴³ Nicolas Gibb, *Duty to Repeal* (London, Adam Smith Institute 1989), 5–6.

⁴⁴ Nicolas Gibb, *Duty to Repeal* (London, Adam Smith Institute 1989), 2.

⁴⁵ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (first published 1776, Oxford, Clarendon Press 1976), book V, c 2, para 126.

⁴⁶ Nicolas Gibb, *Duty to Repeal* (London, Adam Smith Institute 1989), 9–10. See generally Oxera, 'Stamp Duty: Its Impact and the Benefits of its Abolition' (2007) Oxera Research Report Prepared for ABI, City of London Corporation, IMA and London Stock Exchange

⁴⁷ Tom Holland, 'Hong Kong should Scrap its Stamp Duty on Share Trading' *The South China Morning Post* (Hong Kong 18 October 2013) <www.scmp.com/business/banking-finance/article/1333961/hong-kong-should-scrap-its-stamp-duty-share-trade> accessed 5 September 2016.

1.7 Scholarship

In the late nineteenth century, Kyshe Norton wrote about the history of Hong Kong legal development in his work *The History of the Laws and Courts of Hong Kong*.⁴⁸ Norton traced the rise, progress, and successive changes in the various legal institutions and the development of the colonial law and practices in respect of Hong Kong in the nineteenth century. He indicated the date of the introduction of the first Stamp Duty Ordinance in Hong Kong and highlighted the vehement public opposition against the enactment. He made little reference to the motivation behind the introduction. Norton did not discuss the operation of the first Stamp Duty Ordinance in detail and omitted from his work all the subsequent stamp duty legislative changes that occurred in the nineteenth century. He appeared to have understated the revenue law in his work to give way to other legal developments.

Ernst Eitel, a prominent Hong Kong historian in the nineteenth century, in addition to recording the commencement of stamp duty in Hong Kong, also discussed the first stamp duty amendment in his work *Europe in China*.⁴⁹ He appeared to have believed that the amendment was to restore tax equity as proposed by the colonial government, a view that is disputed in this study.

After World War II, literature on the general history of Hong Kong was abundant. Important works included G B Endacott, *Government and People in Hong Kong, 1841-1962: A Constitutional History*,⁵⁰ Steve Tsang, *A Modern History of Hong Kong*,⁵¹ John M Carroll, *A Concise History of Hong Kong*,⁵² Frank Welsh, *A History of Hong Kong*.⁵³ Although literature was prolific in this area, there was no attempt to explain the historical development of Hong Kong stamp duty. Some authors used the introduction of Hong Kong house rates in 1845 to illustrate the social and political background when Hong Kong was just ceded to Britain. Authors seldom commented on Hong Kong stamp duty and its place in history. The introduction of stamp duty was only briefly mentioned to

⁴⁸ (first published 1898, Hong Kong, Vetch and Lee 1971).

⁴⁹ (first published 1895, Hong Kong, Oxford University Press 1983).

⁵⁰ (Hong Kong, Hong Kong University Press 1964).

⁵¹ (Hong Kong, Hong Kong University Press 2004).

⁵² (Hong Kong, Hong Kong University Press 2007).

⁵³ (London, Harper Collins 1997).

illustrate the robust personality of the Hong Kong Governor, who introduced stamp duty in Hong Kong in the mid-nineteenth century.⁵⁴

The leading text on Hong Kong stamp duty is P G Willoughby and A J Halkyard, *A Guide to Hong Kong Stamp Duty*.⁵⁵ This was a masterly technical account of Hong Kong stamp duty. The work concentrated on giving guidance on modern stamp duty practices and providing suggestions about how to avoid modern stamp duty pitfalls. The authors' core objective was to describe to readers the operation of the law, substantiated by a vast number of selected case laws. The monograph stated the year of the introduction of Hong Kong stamp duty as well as the years of some (but not all) subsequent re-enactments of the legislation but did not provide any detail. The work did not attempt an explanatory historical account of the evolution of Hong Kong stamp duty system from 1866 to the present day, as it was irrelevant to the authors' aim in preparing the book.

There were other works on specific tax histories of Hong Kong. They included, Michael Littlewood, *Taxation without Representation: The History of Hong Kong's Troublingly Successful Tax System*;⁵⁶ Kenneth Pang, *History of Rates in Hong Kong*.⁵⁷ Littlewood's work is based on the history of the Hong Kong income tax system when it was first introduced in 1940. The author gave a vivid account of the introduction of income tax in Hong Kong and discusses the factors dictating the development of income taxation in Hong Kong. Pang's work was, as the title implies, a historical account of rates in Hong Kong from its first introduction in 1845 to the present day.⁵⁸ It essentially traced all the changes to the Hong Kong rate legislation and the related rules from 1845 to 2005. Both works served as valuable references for the examination of the interrelationship between Hong Kong stamp duty, Hong Kong income tax and the Hong Kong rate system. However, the works mentioned did not touch on Hong Kong stamp duty, an area that was not relevant to their specialist aims.

Other literature on Hong Kong tax was almost all directed to the professional needs of practising lawyers and accountants, or for students undergoing

⁵⁴ Frank Welsh, *A History of Hong Kong* (London, Harper Collins 1997), 238.

⁵⁵ (Hong Kong, Butterworths Asia 1999).

⁵⁶ (Hong Kong, Hong Kong University Press 2010).

⁵⁷ (2nd edn, Rating and Valuation Department Hong Kong 2005).

⁵⁸ See section 2.1.1.

professional examination. They gave up-to-date accounts of existing practices in all branches of taxes operating in Hong Kong. The section on Hong Kong stamp duty was usually small compared to that of income tax. Leading texts in this area were: Ayesha Lau, *Hong Kong Taxation Law and Practice*,⁵⁹ Dora Lee and C M Ho, *Advanced Taxation in Hong Kong*,⁶⁰ Peter Willoughby and Andrew Halkyard, *Encyclopaedia of Hong Kong Taxation 4 vol*,⁶¹ Patrick Ho, *Hong Kong Taxation and Tax Planning*.⁶²

An article written by Michael Littlewood on the imposition of capital gains tax in Hong Kong: 'Hong Kong's Once – And Future? – Capital Gains Tax',⁶³ discussing the imposition of capital gain tax via the Hong Kong stamp duty system, was the most definitive study to date on one single part of Hong Kong stamp duty history.⁶⁴ Other academic articles⁶⁵ on Hong Kong stamp duty were generally updates of the legislation, comments on new cases relevant to Hong Kong stamp duty, or about the current operation of the law. There was no attempt to systemically track Hong Kong stamp duty legislation advancements during British colonial rule and to offer an explanation of the development of the tax.

Following the development to this point, it is clear the referenced works did not discuss Hong Kong stamp duty history in detail as they had different aims and objectives, targeting different audiences, or else were pursuing alternative discourses. It is thus demonstrated that the history of Hong Kong's stamp duty system required investigation for a number of reasons. First, no substantial literature on the general history of Hong Kong stamp duty has been published. Second, no extensive research has been undertaken on the historical doctrinal evolution of the Hong Kong stamp duty legislation and policies. Third, none of

⁵⁹ (Hong Kong, Chinese University Press 2013).

⁶⁰ (8th edn, Hong Kong, Longman 2003).

⁶¹ (Hong Kong, Butterworth Asia 2013).

⁶² (14th edn, Hong Kong, Pilot Publishing Company Ltd 2015).

⁶³ *Asia Pacific Journal of Taxation*, vol 2, No 4 (January 1998), 7–14

⁶⁴ See section 3.3.9.

⁶⁵ These papers include: Winnie Chung and Michael Littlewood, 'The Arrowtown Case: Stamp Duty and the Ramsay Principle' (2002) 6(4) *Asia-Pacific Journal of Taxation*, 90; Y Y Butt and Patrick Ho, 'Stamp Duty—A Tax Easily Overlooked' (2002) 6(4) *Asia-Pacific Journal of Taxation*, 2; Thomas Lee and Danny Chan, 'Another Pong Case—A Different Subject Matter—S 45, Stamp Duty Ordinance' (2001) 5(4) *Asia-Pacific Journal of Taxation*, 2; A J Halkyard, 'Revenue Law Up-to-Date Part 1: Current Controversies in Estate Duty, and Developments in Stamp Duty' (1996) *Law Lecturers for Practitioners*, 120.

the existing literature has focused on the historical development of Hong Kong stamp duty taking into account the financial, social, economic, political, and other contexts of policy making and legal development. Fourth, there is no research attempting to juxtapose Hong Kong's historical stamp duty legislation and practices with the established positions in Britain, in an attempt to explain the peculiarities of the historical issues faced by Hong Kong. This study will deal with such gaps in the scholarship and thereby provide an original contribution to our knowledge of the Hong Kong fiscal system.

1.8 Sources

The study is essentially an historical examination of Hong Kong stamp duty. As such, most of the sources used to prove the various assertions in the study will be formal Hong Kong primary legal sources and other Hong Kong original sources. Similar sources relating to the introduction and evolution of the British stamp duty were also used, reflecting Hong Kong's status as a British colony when the stamp duty was first introduced and from which it evolved for more than a century. Various secondary sources completed the source base for this study.

Formal Hong Kong primary legal sources

The most important of the formal Hong Kong primary legal sources is the Hong Kong stamp duty legislation. This was published as the *Hong Kong Government Gazette Legal Supplement No 1*. A complete series is housed in the University of Hong Kong Lui Che Woo Law Library as well as in the University of Hong Kong Main Library special collections. Physical examination of the indexes for the over one hundred years under examination was necessary to extract the relevant Ordinances. Electronic sources were available for the stamp duty legislation before World War II under the University of Hong Kong digital initiatives of Hong Kong Government Reports Online⁶⁶ as well as the Historical Laws of Hong Kong Online.⁶⁷ Nonetheless, a search of the aforementioned databases might not produce desirable outcomes as compared to a physical examination of *Hong Kong Government Gazette Legal Supplement No 1*. In any event, the physical examination of *Hong Kong Government Gazette Legal*

⁶⁶ <<http://sunzi.lib.hku.hk/hkgro/index.jsp>> accessed 21 June 2015.

⁶⁷ <<http://oelawhk.lib.hku.hk/exhibits/show/oelawhk/home>> accessed 21 June 2015.

Supplement No 1 was necessary for historical Stamp Ordinances promulgated after World War II as there was no digital online database available for a quick search for these years. The up-to-date Stamp Ordinance in operation could be found in the volumes of the Laws of Hong Kong which was presented in a loose-leaf format. The enactment history for the Hong Kong Stamp Ordinance was presented as a preamble. Nevertheless, this only pinpointed the years in which amendments were made from the year 1981 onwards, the year in which the current Stamp Ordinance was enacted.

Through the examination of the *Hong Kong Government Gazette Legal Supplement No 1*, other Hong Kong legislation that was not specifically enacted only for stamp duty, but nevertheless had a significant impact on the stamp duty system, was discovered.

In order to analyse the differences between the actual Stamp Duty Ordinance passed and the corresponding Stamp Duty Bills, the *Hong Kong Government Gazette Legal Supplement No 3*, which published all the Hong Kong Bills, was consulted.

Another branch of law that had borne upon how Hong Kong was governed during the colonial days, was a certain aspect of the Chinese Qing Dynasty law that the British Colonial government allowed to be practised in Hong Kong. This was the case even after the Qing Dynasty was consigned to history after 1911. As an illustration, before 1971, Hong Kong Chinese males were still allowed to have plural marriages based on the Qing Dynasty Law. Nonetheless, the colonial government did not allow any Qing revenue or stamp duty regulations to have a foothold in Hong Kong. As such, the examination of the Qing Dynasty revenue law⁶⁸ was not necessary for this study. However, the content of some Hong Kong stamp duty legislation promulgated by the British colonial government was affected by Chinese customs.

Besides legislation, the case law relating to Hong Kong stamp duty was examined. Hong Kong had no adequate law reports until 1905. Prior to that

⁶⁸ A comprehensive English source is Shao Kwan Chen, *The System of Taxation in China in the Tsing Dynasty 1644–1911* (first published 1914, New York, AMS Press 1970).

year, the English language newspapers reported on some cases before the Hong Kong courts, and often a complete record of evidence, legal argument, and judgment was preserved in their pages. Lawyers used to cut them out and paste them into scrapbooks.⁶⁹ But this was scarcely satisfactory; in any event, no such scrapbooks seem to have survived to the present day, and thus the knowledge of nineteenth century decisional law on Hong Kong stamp duty, if any, was non-existent. For the twentieth century case law on Hong Kong taxation, the tax cases were grouped under the specialist law report of *Hong Kong Tax Cases* published by the Hong Kong government.

Formal British primary legal sources

Relevant British stamp duty legislation was examined to illustrate the progress of, as well as to serve as a comparison to, the stamp duty law promulgated in Hong Kong.

In order to locate the formal British legislative sources on stamp duty, two secondary sources were of great assistance. They were Stephen Dowell, *A History of Taxation and Taxes in England vol 3*⁷⁰ and J G Monroe and R S Nock, *Monroe and Nock on the Law of Stamp Duties*.⁷¹ These two texts served as a convenient starting point to identify the relevant British statutes. The former text indicates the years in which stamp duty legislation was enacted or amended in Britain before 1885. The latter contains an appendix summarising the major British Stamp Duty Acts enacted from 1894 to the late twentieth century. Once the identity of the relevant British legislation was established, electronic resources were used to obtain the British Statutes. The *Justis United Kingdom Statutes & Statutory Instruments* database⁷² was an excellent online database in this respect.

Besides British stamp duty legislation, British stamp duty case law principles are also of importance as they were binding in Hong Kong reflecting Hong Kong as a British colony during the period under examination. Such British stamp duty cases decided before 1997 are still valid after the 1997 handover. In this regard,

⁶⁹ Peter Wesley Smith, *An Introduction to the Hong Kong Legal System* (Hong Kong, Oxford University Press 1998), 60.

⁷⁰ (first published 1884, London, Frank Cass & Co 1965).

⁷¹ (7th edn, London, Sweet & Maxwell 1989).

⁷² <www.justis.com/default.aspx> accessed 22 June 2015.

relevant British stamp duty case law was extracted from the electronic database such as the Lexis Library.⁷³

Other Hong Kong original sources

An important Hong Kong original source to assist in discovering how a particular Stamp Duty Bill had been debated in the Hong Kong Legislative Council is the *Hong Kong Hansard*.⁷⁴ It is formally known as the *Reports of the meetings of the Legislative Council of Hong Kong*. As the name implies, it records the proceedings of the Hong Kong Legislative Council. The *Hong Kong Hansard* is available online as a free database maintained by the Hong Kong Legislative Council for all years since 1858 (excepting the period during the Japanese occupation).⁷⁵

Another original source is the *Hong Kong Government Gazette*. It first appeared in 1841. In the beginning, it was a supplement to the Canton Press, and was successively printed in newspapers such as *Friends of China*, *Hong Kong Register* and *China Mail*. In 1853, the *Gazette* became a separate publication.⁷⁶ It continues today as the publication of the Special Administrative Region of the People's Republic of China, renamed as the *Government of the Hong Kong Special Administrative Region Gazette*. Hard copies are kept at the University of Hong Kong Lui Che Woo Law Library. Online records were only available for the years before 1942 from the database *Hong Kong Government Reports Online*⁷⁷ and after 1999 from the database of *The Government of HKSAR Gazette*.⁷⁸ The earlier *Gazette* contains material of interest such as letters from the public bodies to the Governors of Hong Kong in the nineteenth century that was not published in any other sources and other relevant resources.

⁷³ <<https://www.lexisnexis.com/uk/legal/auth/bridge.do?rand=0.6064698202612969>> accessed 22 June 2015.

⁷⁴ *Hansard* is the traditional name of the transcripts of parliamentary debates in Britain and many Commonwealth countries. It is named after Thomas Hansard (1776–1833), a London printer and publisher, who was the first official printer to the Parliament at Westminster in the early nineteenth century.

⁷⁵ <www.legco.gov.hk/yr97-98/english/former/lc_sitg.htm> accessed 22 June 2015.

⁷⁶ Hong Kong Public Records Office, 'The Hong Kong Government Gazette'

<www.grs.gov.hk/ws/erp/en/highlights/gazette.html> accessed 11 September 2014.

⁷⁷ <<http://sunzi.lib.hku.hk/hkgro/index.jsp>> accessed 21 June 2015.

⁷⁸ <www.gld.gov.hk/egazette/> accessed 22 June 2015.

For the yearly statistics on the amount of stamp duty revenue collected by the Hong Kong government, the *Hong Kong Annual Report* series that were published from 1889 to 1946 is of assistance. Physical copies are available at the University of Hong Kong Main Library special collections.

The series of *Annual Reports of the Hong Kong Inland Revenue Department* which were published during and after 1956 were useful in extracting the stamp duty collection statistics. The Hong Kong Inland Revenue Department only became responsible for the collection of stamp duty from 1 February 1956.⁷⁹ The older reports are available as electronic copies digitalised by the University of Hong Kong. A request for the links to the online materials can be made at the special collections counter at the University of Hong Kong Main Library.

Other British original sources

An important original source was *The Great Britain Colonial Office Series* related to Hong Kong held by the British Public Record Office in microfilm format. Certain copies are available at the University of Hong Kong Main Library special collections microfilm room. The various Colonial Office (CO) series that have been surveyed include CO129, CO131, CO349, CO381, CO403, CO489, CO537, CO1023, CO1025, CO1026 and CO1030. Some of the series contain relevant correspondence between the Colonial Office in London and the Governors of Hong Kong and also the Colonial Office's internal documents stating the senior officials' views on such correspondence relating to Hong Kong stamp duty.⁸⁰ The most valuable of these, by far, were the series of files categorised under CO129. The research on the pre-World War II Hong Kong stamp duty system relied heavily on this original source. Indeed, in the nineteenth century, due to the brief nature of the *Hong Kong Hansard* reports, that often did not relate the subtle facts and the hidden rationales of the stamp duty law enacted, this source is of paramount importance to the understanding of the Hong Kong stamp duty system. More often than not, in the nineteenth

⁷⁹ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1956–57' (Hong Kong, Hong Kong Government Printer 1957), 1.

⁸⁰ For an understanding of how the Colonial Office records are categorised see Mandy Banton, *Administering the Empire, 1801–1968: A Guide to the Records of the Colonial Office in the National Archives of the UK* (London, University of London, Institute of Historical Research 2008), 49–106.

century, the Hong Kong Governors communicated freely with the Secretaries of State for the Colonies of the British Colonial Office through this previously undisclosed correspondence collected under *The Great Britain Colonial Office Series*.

The study also draws upon the historical debates on British stamp duty law available in the *British Journal of House of Commons (1688–1834)* as well as the *British House of Commons Hansard (1803–2005)*, which provides an invaluable route to understanding how the British system of stamp duty evolved and to what extent it was brought into Hong Kong in the late nineteenth century. These sources help to comprehend why the Hong Kong stamp duty system commenced as it did and the underlying motives and perceptions of the British stamp duty provisions adopted in Hong Kong, if any. The materials are available under the online database of *British House of Commons Parliamentary Papers* maintained by ProQuest.

Secondary sources

In addition to the formal primary legal sources and other original sources, the study also relied on secondary sources which were mainly in the form of monographs, textbooks and journal articles. Some of the sources were directly related to taxation and stamp duty. Other non-tax-related sources were also used to understand how diverse factors moulded the Hong Kong stamp system into its modern shape. Secondary sources of eight main kinds were relied on.

First, are the sources related to the history of stamp duty. These consisted of mainly British, American, Australian and Chinese accounts of stamp duty history. They are of fundamental significance to the understanding of why the Hong Kong stamp duty system was written in a certain way. The monographs on the history of stamp duty in China not only provide an understanding of how the Qing Dynasty officials received the western idea of stamp duty during the Qing Dynasty in the late nineteenth century, but also provide a platform to understand how the Hong Kong government avoided certain failures associated with the practice of stamp duty in China during the Qing dynasty and the succeeding Kuomintang era, as advocated by the authors.

Second, are the sources related to the history of taxation. Notwithstanding that none of the sources under this category specifically relate to Hong Kong stamp duty history, these still provide accounts of the histories of the tax system which are useful both for general understanding and for approaches to the subject they indicated. Besides providing useful background, some of the monographs also deliver discussions on the taxation theories that emerged during the course of the study of the histories of the respective tax systems pertinent to the historical study of the Hong Kong stamp duty system.

Third, are the sources of substantive stamp duty law in Hong Kong and Britain. These textbooks and practitioner books assisted in the understanding of the evolution of black-letter stamp duty law in Hong Kong and provide a foundation for research on the linkages of the stamp duty law with wider financial, political, economic and social policy concerns of the Hong Kong government.

Fourth, are the sources of the general history of Hong Kong. These sources are vital in providing an understanding of the historical settings as to why stamp duty was introduced in Hong Kong as well as why stamp duty changes were implemented. These sources are also critically employed in the analysis of relationships between social policies and Hong Kong stamp duty.

Fifth, are the sources of history of the courts and law in Hong Kong. This category provides a background for how stamp duty law was administered in Hong Kong. Within this category, some sources related to the court system and philosophy during the Qing Dynasty are selected to contrast with the Hong Kong British system to provide explanations of the Hong Kong Chinese' attitudes towards the introduction of stamp duty in Hong Kong in the nineteenth century.

Sixth, are the sources of government, politics and administration of Hong Kong. These sources are important in the derivation of explanations for Hong Kong stamp duty policies relative to the role of the Hong Kong and British governments, as well as other non-government actors such as pressure groups and public opinion.

Seventh, are sources of economic background. These mainly relate to economic efficiency with regard to the effects of taxation on the willingness to work, to save and to invest. Some sources relate to tax equity and tax incidence. Some monographs under this category discuss macroeconomic policy to promote economic growth. Although none of these economic publications deliberated on the Hong Kong stamp duty policies and their effects on the Hong Kong economy, they are crucial in providing approaches to the analysis of the economic aspects of the Hong Kong stamp duty system.

Eighth, are the sources of research methods for law and taxation. These provide vital guidelines on the general approaches to legal and taxation research methods, which were adopted throughout the study.

1.9 Referencing matters

The Chinese mandarin pinyin system will be used for the transliteration of Chinese terms. Exceptions are names of Cantonese⁸¹ origin which have already been widely published by local English newspapers or used extensively in Hong Kong government documents under the Hong Kong government's Cantonese Romanisation method. This exception is prudent as any attempt to use the Chinese mandarin pinyin system to transliterate them may increase rather than alleviate confusion.

⁸¹ Cantonese is a Chinese dialect that originated in the vicinity of Canton. Nowadays, within the Mainland China, it is spoken widely in Guangdong Province. Outside Mainland China, it is the language used by the population of Hong Kong and the Macau people in everyday life. It is also spoken by overseas Chinese communities in Southeast Asia (like Malaysia and Singapore), United Kingdom, Canada, Australia and the United States. According to the South China Morning Post of 6 October 2009, Putonghua is the official language on the Mainland China, but if history had played out differently the vast majority could have been speaking Cantonese. In 1912, shortly after the fall of the Qing dynasty, the founding fathers of the republic met to decide which language should be spoken in the new China. Mandarin – now known as Putonghua [the common language] – was then a northern dialect spoken by the hated Manchurian Qing court officials. While it had served as China's lingua franca for centuries, many perceived it as an 'impure form' of Chinese. Many of the revolutionary leaders, including Dr Sun Yat-sen, were from Guangdong – which has long been China's land of new ideas. A great debate started between the delegates and eventually led to a formal vote. Cantonese lost out by a small margin to Putonghua and the rest is history. See Editorial, 'Cantonese Almost Became the Official Language' *South China Morning Post* (Hong Kong 6 October 2009) <www.scmp.com/article/694592/cantonese-almost-became-official-language> accessed 2 September 2016.

Chapter 2 The origins of Hong Kong stamp duty

This chapter aims to identify the primary and secondary imperatives that led to the introduction of a stamp duty system in Hong Kong. The ensuing investigation specifically explores financial necessity as the primary impetus, and considers the roles of other non-financial demands. This evaluation will reflect the extent to which these imperatives may have shaped the stamp duty law when it was first enacted in Hong Kong.

In order to discern the drivers underlying the introduction of the stamp duty to Hong Kong, the historical basis for Hong Kong's first Stamp Duty Ordinance is investigated, as well as the implications for colonial governance in Hong Kong. The investigation focuses on the origins, evolution and rationale for the development of the British Stamp Act from its Dutch antecedents, qualified by Britain's stamp duty experience during its colonial governance of North America, until its modified adoption as a stamp duty system in Hong Kong. The first Hong Kong stamp duty legislation will then be analysed in detail to show why certain elements of the British Stamp Act were adopted while others were omitted.

In this context, the objectives of this chapter are twofold. First, is to identify the forces that gave rise to the need for and introduction of the Hong Kong stamp duty system. Second, is to investigate the British origins of the first Hong Kong Stamp Ordinance, and other probable antecedents.

In order to attain the first objective, the financial and non-financial imperatives in the introduction of stamp duty in Hong Kong, and the various social, political, and ideological forces in Hong Kong potentially shaping the Hong Kong stamp duty system, are investigated.

In order to attain the second objective, the salient features of the Britain's Stamp Duty Acts before the introduction of the Hong Kong Stamp Ordinance are investigated. The Acts provide a platform for analysing the introduction of

stamp duty in Hong Kong in respect of its charging sections, computation methods, jurisdictions subject to tax, collection methods, safeguards and noncompliance rules. The introduction of stamp duty in America in 1765 that subsequently led to American independence will be explored in order to ascertain how far the American experience affected the introduction of stamp duty into Hong Kong. This study will explore to what extent the factors that caused the American Stamp Act to be unacceptable and unsustainable influenced the British colonial administrative and fiscal policy during the early period when the British took over Hong Kong.

2.1 The driving forces behind the introduction of Hong Kong stamp duty

This section aims to identify and explore the imperatives that underpinned the introduction of the first Hong Kong stamp duty legislation – the Hong Kong Stamp Ordinance 1866.⁸²

2.1.1 Early colonial Hong Kong and its revenue needs

It seems intuitively evident that in order to ascertain the imperatives which occasioned the introduction of stamp duty into Hong Kong in 1866 one needs to examine the colony's financial circumstances in the years immediately prior to the enactment of the Ordinance.

Lord Palmerston, the British Foreign Secretary when Hong Kong Island was ceded, described it as 'a barren island, which will never be a mart of trade',⁸³ yet Hong Kong Island was in fact inhabited by local Chinese carrying out various commercial activities before the British took control. The population of Hong Kong Island in 1841 was around 5,000 to 7,000 persons.⁸⁴ Hong Kong soon became attractive to Chinese of all walks of life from Guangdong as well as European merchants. By the year 1845, according to the census conducted by the government, Hong Kong's population was 23,817.⁸⁵

Being a multiracial community, the first task for the Hong Kong government was to set up a police force to maintain law and order. This required financial

⁸² No 12 of 1866.

⁸³ Frank Welsh, *A History of Hong Kong* (London, Harper Collins 1997), 1.

⁸⁴ John M Carroll, *A Concise History of Hong Kong* (Hong Kong, Hong Kong University Press 2007), 19.

⁸⁵ Hong Kong Census (1844), CO129/12, 304–10.

resources. John Davis, the second Governor (in office 1844–1848), raised revenue to support the police force by levying rates on properties.⁸⁶ The tax was based on a percentage of the value of each parcel of ground, house or building, and was payable by the owner or occupier. The Governor, with the advice of the Executive Council, determined the percentage. The sum was calculated to not exceed the expenses of the police establishment.⁸⁷ The British merchants immediately protested and presented a petition to the Secretary of State for the Colonies. Nevertheless, Davis enjoyed the support of the Secretary and the first Rating Ordinance, Ordinance No 2 of 1845 was enacted.⁸⁸

From 1845 to 1865, Hong Kong's public expenditure was financed by rates – the only form of taxation in the colony till the introduction of stamp duty in 1866 – sales of land, opium licences and spirit licences with no other plausible avenue to boost public revenue.⁸⁹ A vast portion of public money was used to combat burglary and piracy, and to improve the general sanitary conditions of the colony in its formative years. This increased the Governor's difficulties in balancing the budgets as well as the provision of other public goods. The deficiency in revenue caused the colony to be constantly in financial straits.

On 25 July 1866, Sir Richard MacDonnell, the sixth Governor of Hong Kong (in office 1866–1872), informed the Hong Kong Legislative Council that the government had been running a deficit for three years and he expected that there would be a deficit in 1867 as well.⁹⁰ It was in this context that MacDonnell tabled a bill entitled 'Establishing of a Stamp Office, and Imposing and Regulating Stamp Duties in the Colony' for debate in the Legislative Council on

⁸⁶ Alvin Rabushka, *Value for Money: The Hong Kong Budgetary Process* (Hoover Institution Press 1976), 12.

⁸⁷ Kenneth Pang, *History of Rates in Hong Kong* (2nd edn, Rating and Valuation Department Hong Kong 2005), 1–2. It is interesting to note that the Cantonese term for rates is still in use today – Chai Heung, which literally means policemen's salary.

⁸⁸ Steve Tsang, *Democracy Shelved: Great Britain, China, and Attempts at Constitutional Reform in Hong Kong 1945–1952* (Hong Kong, Oxford University Press 1988), 2.

⁸⁹ Information available from the Revenue and Expenditure Reports of the Colony of Hong Kong 1845 to 1865 published in the Hong Kong Blue Book. See Hong Kong Government, 'Blue Book' (Hong Kong, Hong Kong Government Printer, 1845–1865).

⁹⁰ Meeting of the Hong Kong Legislative Council (July 25 1866), CO129/115, 46.

14 August 1866.⁹¹ The Governor highlighted his intention to introduce stamp duty in order to reduce the estimated 1867 budget deficit of HK\$120,000.⁹²

To be precise, when MacDonnell presented the stamp duty bill in 1866, he showed the Legislative Council the various deficits to emphasise the importance and necessity for a new tax. The deficits were as follows:⁹³

1. Maintenance of gun-boats	HK\$26,000
2. Reservoir at Pok Fu Lam	HK\$50,000
3. Sanatorium at Kowloon	HK\$11,000
4. Carriage road to Gap	HK\$23,000
5. Roads in Kowloon	HK\$4,000
	<hr/> HK\$114,000 <hr/>

The foregoing deficits were selected to make a forceful point in the Legislative Council. The investigation shows that MacDonnell promoted the stamp duty law and pre-empted opposition by not highlighting in the Hong Kong Legislative Council, the annual military contribution of HK\$94,000⁹⁴ demanded by the British government. Such military contribution was the centre of discussion with the Secretary of State for the Colonies as it was the major cause of the Hong Kong budget deficit.⁹⁵ In the Legislative Council, he concentrated on the need for public money to improve sanitary conditions, combat pirates and build roads as well as to develop the Kowloon Peninsula, which the British had acquired from the Qing government a few years previously. This evidence indicates that the introduction of stamp duty in 1866 was in response to the dire financial need of the colony at that time.

MacDonnell advised that the first Hong Kong stamp duty bill presented to the Legislative Council replicated that of another British colony, the Singapore Stamp Ordinance, with seventy-one heads of charge incorporating various

⁹¹ Hong Kong Hansard 14 August 1866.

⁹² Hong Kong Hansard 5 September 1866.

⁹³ Ibid.

⁹⁴ *Hong Kong Government Gazette*, 'Votes and Proceedings of the Legislative Council of Hong Kong' (Hong Kong Government 8 September 1866); The 1867 Hong Kong Appropriation Bill, No 10 of 1866.

⁹⁵ Letter from Richard MacDonnell to Henry Herbert (10 September 1866), CO129/115, 33.

chargeable instruments for stamp duty.⁹⁶ By adopting the Singapore legislation, MacDonnell intended to enhance the acceptability and sustainability of the Hong Kong stamp law. This was based on the ideology which he articulated in the Legislative Council: 'As Singapore, having a similar background as Hong Kong, enacted the stamp law with no disappointment, stamp duty should be the best policy for Hong Kong permitted by the circumstances at that time'.⁹⁷ He further promoted his observation of Singapore's development and conjectured the future of Hong Kong stamp duty in the Legislative Council that the imposition of a stamp duty in Singapore 'had not produced in (sic) a less wealthy colony than Hong Kong'.⁹⁸

The evidence reveals that although MacDonnell showed political wisdom in using Singapore as a model to promote his stamp duty policy and refrained from accentuating the sensitive issue of military contribution, he nevertheless honestly admitted in the Legislative Council that his objective in implementing stamp duty was incontestably to raise revenue. By examining the correspondence between MacDonnell and the Secretary of State for the Colonies,⁹⁹ it becomes clear that there is no evidence to suggest MacDonnell had another dominant objective in mind that was contrary to the revenue-raising aim when he advocated the implementation of a stamp duty system.

The introduction of the new duty was vigorously opposed, suggesting the recognition by the Legislative Council that the stamp duty legislation was an unambiguous measure to raise revenue. Subsequent to the Governor's announcement of his intention, all three unofficial members¹⁰⁰ of the Legislative Council, James Whittall, John Dent and H B Gibb,¹⁰¹ submitted a written protest on 29 August 1866, together with a long list of signatories from the Hong Kong

⁹⁶ Establishing a Stamp Office, and Imposing and Regulating Stamp Duties in the Colony Bill (1866), sch.

⁹⁷ Meeting of the Hong Kong Legislative Council (25 July 1866), CO129/115, 45.

⁹⁸ Letter from Richard MacDonnell to Henry Herbert (10 September 1866), CO129/115, 35.

⁹⁹ Letter from Richard MacDonnell to Henry Herbert (10 September 1866), CO129/115.

¹⁰⁰ Individuals who are appointed by the Governor to be a member of the Hong Kong Legislative Council but who are not a civil servant. See also section 2.4.2. Throughout this thesis, the term 'unofficial member' is employed, instead of another commonly used term 'non-official member'.

¹⁰¹ British heads of business of prominent trading firms Jardine, Matheson & Co, Dent & Co and Gibb, Livingston & Co respectively.

British community, objecting to the enactment of the proposed Stamp Duties Ordinance.¹⁰² The unofficial members presented five grounds for objection.

First, the unofficial members requested the deferral of some of the public works.¹⁰³ Second, they petitioned for a tax increment to the existing house rates as it was apprehended that if stamp duty was sanctioned, the new legislative powers may be exploited in the future to raise revenue by adding new heads of charge and/or increasing tax rates:

It is this expansive property that is the evil at the bottom of the whole proposition, as passing a stamp tax, avowedly as the future proper mode of meeting any public exigencies that may arise, amounts to a declaration that, if money is needed for expenditure in the colony, trade must be taxed by new or altered stamp imposts to supply the amount.¹⁰⁴

Third, the unofficial members advocated for government to raise public debt funds as they viewed expenditures on roads, reservoir and sanatorium as non-recurring, and as such a new permanent tax should not be introduced. Fourth, stamp duty was unfair as they predicted only the European and the American communities would bear the tax. It was believed that the Chinese community would be able to evade the tax without being detected since tax collectors did not understand Chinese documents. Fifth, Hong Kong's commerce would be badly affected, as traders would send their orders elsewhere to avoid the tax on commercial documents.¹⁰⁵

In his address to the Legislative Council on 5 September 1866, MacDonnell reiterated the worsening budget deficit. The Hong Kong government needed a permanent source of funds and temporary measures did not help. He would not forsake the legislation of stamp duty unless: 'our last road and our last drain and our final repairs to public buildings, if in fact everything, that mark the

¹⁰² Hong Kong Hansard 5 September 1866, 1–2.

¹⁰³ Memorial and Protest against the Stamp Ordinance 1866 (29 August 1866), CO129/115, 52–53.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

progress in a community, not yet smitten by decay, could all be completed by the end of 1867'.¹⁰⁶

MacDonnell perceived that borrowing would create a heavy interest burden for the government. The government would then need to impose an equivalent tax on the public or discontinue public improvements.¹⁰⁷ Examination of secondary sources revealed there was another reason MacDonnell refrained from borrowing – it was the Colonial Office's cautious view on financing a colony by loan. By looking at the colonial fiscal methodologies commonly adopted by British colonies in the nineteenth century, the Colonial Office generally believed that borrowing for the purpose of meeting current expenses would be the 'most ruinous practice'.¹⁰⁸ The Colonial Office would only concede borrowing if the work undertaken offered a large return and with a fair loan interest rate. Compared to promulgating stamp duty legislation, borrowing was an easy way out, but the Governor could not resort to loan funds due to the constraints imposed by the Colonial Office. Furthermore, public borrowing with an attractive interest rate was only possible if Hong Kong could guarantee the repayment of debts by a viable tax system that could generate stable revenue. To illustrate this, the British government financed many wars by borrowing in the eighteenth and nineteenth centuries. This was possible because Britain had a tax system that could guarantee non-default repayments.¹⁰⁹ In 1866, a comprehensive tax system was not in place in Hong Kong and house rates were the only form of Hong Kong taxation at that time. This made borrowing difficult with what MacDonnell perceived as high rate of interest of 8% per annum.¹¹⁰

To deal with the unofficial members' apprehension that, if stamp duty was sanctioned, the system might be systematically exploited to raise money thereafter, MacDonnell inserted a limitation clause in the Hong Kong Stamp

¹⁰⁶ Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 48.

¹⁰⁷ Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 49.

¹⁰⁸ Paul S Reinsch, *Colonial Administration* (London, MacMillan 1912), 147.

¹⁰⁹ Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilization* (2nd edn, Lanham, Maryland, Madison Books 1999), 270.

¹¹⁰ Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 48–49.

Ordinance 1866 to enhance its acceptability. Section 25 of the Hong Kong Stamp Ordinance 1866¹¹¹ stipulated that the Governor might exempt or lower rates of stamp duty by an order published in the *Government Gazette*. No equivalent power was granted to the Governor to increase the stamp duty rates. This implied that the Governor would not be able to raise the rate without going through the Legislative Council again.

To deal with the apprehension of unlimited expansion of the scope of stamp duty in the future and the negative effect on commerce, MacDonnell reduced the number of dutiable items, simplifying the original proposal of seventy-one heads of charge (same as those in operation in Singapore) to twenty-one heads of charge.¹¹² By comparing the first Stamp Duty Bill and the 1866 Stamp Ordinance, the items sifted out were: affidavits, arbitrations, awards, drafts, cheques, comprador orders, bills of sale, cognovits, compositions between a debtor and his creditor, co-partnership instruments, writings to attest a true copy, covenants, declarations, deeds of gift, guarantees, life insurance policies, shipping insurance policies, letters of credit, letters of license from a creditor to his debtor, trust deeds for the benefit of a creditor, releases to a debtor by his creditor, releases to an executor or trustee from his trust, settlements, marriage settlements, and warranties of attorney to confess judgment. The 1866 Stamp Ordinance reduced the charging heads by simplifying the application to the following categories: agreements, bonds, conveyances, mortgages, bills of exchange and promissory notes.

MacDonnell informed the Legislative Council that he had performed a 'careful sifting' of the Singapore stamp legislation to reduce seventy-one heads to twenty-one.¹¹³ The selection criteria by which the 'careful sifting' was effected, was not outlined in either the Governor's Legislative Council address or in his correspondences with the Secretary of State for the Colonies. A possible reason for this was that MacDonnell omitted some items such as drafts,

¹¹¹ No 12 of 1866.

¹¹² Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 49.

¹¹³ Ibid.

cheques, comprador orders,¹¹⁴ shipping insurance policies and letters of credit that were used frequently in Hong Kong trading¹¹⁵ activities during that era. This might have been done to win acceptance from the unofficial members, who were all heads of prominent British trading firms. The reductive and simplifying measures adopted would also mitigate the protestors' perceived detrimental effects of tarnishing trade, as according to them, orders would be driven out of Hong Kong due to the introduction of stamp duty. These gestures also contributed to the sustainability of the stamp duty by minimising the possibility of strikes and riots by the local community and future petitions to the Colonial Office by the British traders.

In soliciting the sanction of Legislative Council unofficial members for his tax measure, MacDonnell referred to the experience of Singapore in introducing stamp duty before Hong Kong. As with Hong Kong, Singapore was mainly inhabited by great numbers of Chinese and established as a British commercial depot to promote free trade.¹¹⁶ The commerce of the two colonies was essentially transit trades with neighbouring countries. As Hong Kong and Singapore functioned within similar parameters, it would be reasonable to foresee that 'if a heavy and complicated stamp duty worked satisfactorily and without impediment to business in Singapore, a simple and light stamp duty would work even more satisfactorily in Hong Kong'.¹¹⁷ MacDonnell remarked that: 'There were no depressing effects being reported relating to the implementation of stamp duty in Singapore.'¹¹⁸ The Hong Kong stamp duty was modelled after the successful taxes and tariffs of Singapore. MacDonnell believed that stamp duty would engender positive results for Hong Kong in its revised form.¹¹⁹

¹¹⁴ A comprador is native agent of a foreign enterprise in China and some other Asian countries in the nineteenth century as well as in the early twentieth century.

¹¹⁵ See Steve Tsang, *A Modern History of Hong Kong* (Hong Kong University Press 2004), 56–62. In the first decade of British rule, opium trade was the most important economic activity. Jardine Matheson, and other British traders, were involved directly or indirectly in the export of opium to China. Hong Kong became the location of choice for head offices or regional headquarters for these major trading houses. Gradually these firms engaged more into other trading activities and by the time stamp duty was proposed, social and financial networks to leading international cities in Europe, America and elsewhere in Asia, began to take their form. This network also benefited the Chinese traders who set up operations in Hong Kong to engage in international trade.

¹¹⁶ Letter from Richard MacDonnell to Henry Herbert (18 October 1866), CO129/115, 269.

¹¹⁷ Ibid 270–71.

¹¹⁸ Letter from Richard MacDonnell to Henry Herbert (18 October 1866), CO129/115, 271.

¹¹⁹ Ibid.

In response to the protestors' remarks that the duty was unfair as the Chinese community would be able to evade the tax without being detected since the tax collectors did not understand Chinese documents, MacDonnell said, according to the experience in the Straits Settlements of Singapore, the Chinese would probably not evade tax as they regarded stamp duty as a validation of their trades.¹²⁰ Hence, he considered the concern for potential evasion by the Chinese community as groundless.

In reality, the Chinese community (Chinese merchants) submitted a written protest to the Governor regarding the proposed stamp duty on 5 September 1866 (the same day on which MacDonnell addressed the Legislative Council after the unofficial members' protest).¹²¹ It was noteworthy that the Chinese protest was not sent to the Colonial Office for consideration. This supported the observation that the ethos of the Hong Kong governing class at that time had little interest in the local Chinese beyond maintaining stability and good order conducive to trade.¹²² This was apparent from the 1866 composition of the Legislative Council, which had no Chinese representative to offer any insight on MacDonnell's perception of Chinese customs. The Hong Kong Chinese merchants protested unequivocally that the levying of stamp duty would be obstructive and inconvenient. Similar to the British community, they advocated an increase in the house rates.¹²³

Clearly, despite the Governor's efforts to promote the legitimacy of the proposed stamp duty law, the evidence presented above shows the Governor faced vehement public opposition on the basis that the Bill was an unequivocal

¹²⁰ Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 50–51.

¹²¹ *Hong Kong Government Gazette*, 'Deputation from the Chinese Residents of Victoria waited on His Excellency Sir Richard Graves MacDonnell, CB and Commander-in-Chief at government house to receive a reply to an address [to annul the Stamp Duty Ordinance] which they had presented on 5 ultimo [5 September 1866], Government Notification No 145' (Hong Kong Government 6 October 1866).

¹²² Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 69.

¹²³ *Hong Kong Government Gazette*, 'Deputation from the Chinese Residents of Victoria waited on His Excellency Sir Richard Graves MacDonnell, CB and Commander-in-Chief at government house to receive a reply to an address [to annul the Stamp Duty Ordinance] which they had presented on 5 ultimo [5 September 1866], Government Notification No 145' (Hong Kong Government 6 October 1866); see section 2.1.1.

revenue-enhancing measure. It was not recorded whether unofficial members openly accepted the strategies adopted by MacDonnell but endorsed stamp duty with grace. After further debate, subsequent legislative amendments were made by MacDonnell. His final address in the Legislative Council on the enactment of the Hong Kong stamp duty with the dominant aim to raise revenue, plus the final draft of the legislation together with the written protests by the unofficial members and the Governor's representation, were sent to the Colonial Office for approval. On 15 December 1866, the Secretary of State for the Colonies, Lord Henry Herbert sent his consent to the colony after considering the opposition's views and the Governor's opinions.¹²⁴ Accordingly, the Stamp Ordinance No 12 of 1866 (Hong Kong Stamp Ordinance 1866) was enacted.

The appraisal of Hong Kong's financial exigency together with MacDonnell's speeches in the Legislative Council, wherein he expressed his revenue objective for the new stamp duty legislation, the intense political opposition seeking to annul the stamp duty proposal, as well as an examination of the correspondence between the Governor and the Colonial Office, allows the conclusion that the most important driver for introducing the Hong Kong Stamp Ordinance 1866¹²⁵ was undoubtedly the need for revenue enhancement.

There is other quantitative evidence to support this conclusion. MacDonnell appointed Mr F W Mitchell as Hong Kong's first Collector of Stamp Revenue.¹²⁶ The first Hong Kong Stamp Office employed five staff in its initial operation.¹²⁷ With a salary increase of 20%,¹²⁸ MacDonnell expanded the role of the Post Master General, Mr F W Mitchell, to include those duties of Collector of Stamp Duty. Together with the five staff, the total annual remuneration outlay for the department was HK\$5,190.¹²⁹ The expenditure incurred on the fitting of the new

¹²⁴ Letter from Henry Herbert to Richard MacDonnell (15 December 1866), CO129/121, 138.

¹²⁵ No 12 of 1866.

¹²⁶ Extract from the Minutes of the Executive Council of Hong Kong (28 September 1867), CO129/125, 35–36.

¹²⁷ Ibid 37. The five staff members were the first clerk, second clerk, Chinese interpreter and two general helpers.

¹²⁸ Letter from Richard MacDonnell to Richard Grenville (23 September 1867), CO129/124, 387.

¹²⁹ Extract from the Minutes of the Executive Council of Hong Kong (28 September 1867), CO129/125, 36.

Stamp Office was HK\$1,200.¹³⁰ Nonetheless, the revenue raised before the official implementation of the 1866 Stamp Duty Ordinance had already exceeded HK\$12,000 with ‘the banks and principal firms having supplied themselves with a number of stamps before the day fixed for the Ordinance coming into operation’.¹³¹ The total revenue collected for the first year was around HK\$100,000.¹³² The evidence demonstrates the operation of the Stamp Office was financially effective and efficient even before it was officially in operation. The analysis also shows that the Stamp Office was already generating an operating surplus with low administrative expenditures in its first year of operation. This background confirms that the introduction of stamp duty had a very positive outcome, reflecting the probability of a financial objective.

2.1.2 Non-revenue demands for the introduction of the Hong Kong Stamp Ordinance

The arguments discussed for imposing the new stamp duty in 1866 were largely about raising funds to cover the budget deficit. Undoubtedly, that was the case as MacDonnell was looking for a fresh sustainable source of revenue. However, it is possible there were secondary non-financial motives reflective of a response to social and environmental circumstances. This section evaluates the extent to which such circumstances accounted for the genesis of Hong Kong stamp duty, and further examines whether stamp duty successfully fulfilled the consequent requirements.

The British and Chinese protestors suggested that instead of levying stamp duty, the Governor should consider imposing a water rate or reservoir rate and increasing the police rate to build the reservoir and to maintain the gunboats that were emphasised by MacDonnell when presenting the Stamp Duty Bill in 1866.¹³³ To that point the sole form of taxation in the colony had been house rates, a combination of the police, lighting and water rates. MacDonnell rejected

¹³⁰ Letter from Richard MacDonnell to Richard Grenville (14 November 1867), CO129/125, 334.

¹³¹ Letter from Richard MacDonnell to Richard Grenville (23 September 1867), CO129/124, 387.

¹³² *Hong Kong Government Gazette*, ‘Votes and Proceedings of the Legislative Council of Hong Kong’ (Hong Kong Government 17 October 1868).

¹³³ See section 2.1.1.

the notion of increasing house rates as a solution for all revenue needs, and insisted on the introduction of the 1866 Stamp Ordinance.¹³⁴

Examining the reason for MacDonnell's persistence, his address to the Legislative Council was particularly revealing:

When Legislation first commenced here rates were unknown.¹³⁵ As money is wanted houses were subsequently taxed. At first lightly, and subsequently more heavily till now the rates amount to 12% on the rental. Householders should now pay more because they already pay so much. Thus if previous legislation had gone on piling every burthen on that one species of property till rates amount to fifty per cent we should, according to the Memorialists, have all the stronger argument for raising them still higher.¹³⁶

The evidence shows that the unfairness of continuing to impose the government's financial burdens on householders was his subsidiary driving motivation for introducing stamp duty.

To fully comprehend MacDonnell's statement, an understanding of the historical background of Hong Kong's house rate collections till the year 1866 is necessary. Besides the police rate, which was introduced by Governor John Davis in 1845, a lighting rate¹³⁷ was introduced in 1856 and a water rate¹³⁸ was added in 1860. The lighting rate was levied when the government decided to introduce a system of public lighting for the City of Victoria in 1856. The water rate was enacted in 1860 with the objective of supplying water for the City of Victoria. The City of Victoria referred merely to the Central District on the Hong Kong Island today¹³⁹ and not the entire Hong Kong Island and Kowloon Peninsula under British governance in 1866. As noted by MacDonnell, the aggregate of the house rates comprising the three components mentioned

¹³⁴ Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 49.

¹³⁵ Rates were imposed in Hong Kong in 1845. See section 2.1.1.

¹³⁶ Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 49.

¹³⁷ Kenneth Pang, *History of Rates in Hong Kong* (2nd edn, Rating and Valuation Department Hong Kong 2005), 4.

¹³⁸ *Ibid* 5.

¹³⁹ Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 17.

above, amounted to 12% of the value of each parcel of ground, house or building. All households in Hong Kong had to pay all three rates. Yet, the lighting rate and the water rate were for the improvement of the City of Victoria and would not benefit households situated beyond the city. MacDonnell in his pre-legislation speech on stamp duty in the Legislative Council told members that he rejected an increase in the water rate to facilitate the building of a reservoir as the levy was paid by a vast number of households not receiving supply from the reservoir and it would be unjust to ask for additional payment.¹⁴⁰ With the same reasoning, MacDonnell considered the gunboat expenditures were related only to surveillance over neighbouring waters and the prevention of piracy.¹⁴¹ These costs should fairly be paid by general government consolidated revenue rather than by householders. By applying the matching principle to revenues and expenditures, the Governor found it unjustifiable to increase any component of the house rates. It was thus crucial for Hong Kong to widen the tax base by introducing a new form of taxation and not rely on a single class of taxpayers – that is, householders, including lower income labourers.

Nonetheless, it was perplexing that both the British and Chinese communities protested against stamp duty but favoured an augmented house rates policy. In both cases, additional taxes were to be collected. Investigating further, MacDonnell's written reply to the Chinese merchant protestors was particularly illuminating:

You asked, however, to pay an increased house rate instead of a stamp duty. Is it just that houses, which now pay more than HK\$200,000 per annum, should bear all burdens? The general business of the place has never yet contributed anything directly to its expenses now, under the Stamp Ordinance, those who have no chance of making profit by business will pay nothing. The poor who have only their labour, would under your plan, be soon made to bear your legitimate burden because, if rates were increased, you would charge more for rent. The new Ordinance therefore is more

¹⁴⁰ Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 50.

¹⁴¹ Ibid.

just for you. It also reaches in its operation many, who, though not residing in Hong Kong, use Hong Kong as their chief mart of business, whereas your plan would throw on those, who reside here, all the cost of maintaining the quays, roads, police and harbour, which consequently facilitate the business of the absentees just as much as of residents.¹⁴²

In this light, it is submitted that the protestors' background provides a clue as to why they opposed stamp duty. They were merchants and were protecting their mercantile interests. By increasing the house rates, they were able to pass on to the tenants the additional rate whereas the imposition of stamp duty would impact their businesses directly.

As a whole, the evidence demonstrates that MacDonnell conceived the duty of the government was to devise some new scheme for raising the necessary public revenue instead of unfairly laying the entire burden on householders alone. He found the practice of not taxing Hong Kong businesses was irrational. His chosen regulation, the Hong Kong Stamp Ordinance 1866,¹⁴³ would broaden the tax base to a variety of commercial activities in Hong Kong. Accordingly, the previous tax immunity bestowed upon businesses in Hong Kong was removed. Stamp duty widened the tax base and levied taxes on the previously untaxed commercial areas. The lower income householders would not be impacted by a probable sharp increase in the house rates whenever there was a public revenue demand.

In this way, MacDonnell demonstrated a keen sense of social responsibility in taking care of the poorer people in the community through his insistence on the implementation of stamp duty despite fierce opposition. The consequent dual taxation system of house rates and stamp duty implemented in Hong Kong was more equitable than before. Both the businessmen and householders shouldered some of the revenue burden.

¹⁴² *Hong Kong Government Gazette*, 'Deputation from the Chinese Residents of Victoria waited on His Excellency Sir Richard Graves MacDonnell, CB and Commander-in-Chief at government house to receive a reply to an address [to annul the Stamp Duty Ordinance] which they had presented on 5 ultimo [5 September 1866], Government Notification No 145' (Hong Kong Government 6 October 1866).

¹⁴³ No 12 of 1866.

The historical evidence reveals that the total rates levied on a household in 1866 were 12% and by 1900 had risen to 13%.¹⁴⁴ While it is not valid to claim that the policy of employing stamp duty was successful in widening the tax base and protecting householders from escalating tax burdens, it is a reasonable speculation that the rates in 1900 would have been much higher than 13% if stamp duty legislation had been rejected in 1866. Thus, the historical evidence of household rates implies that stamp duty was effectual in widening the tax base and ensured the tax burden was more equitably applied.

Besides the need to widen the tax base, the extent to which easing Hong Kong's overcrowded living conditions, could constitute another secondary impellent underlying the first imposition of stamp duty in Hong Kong.

In his letter to the Secretary of State for the Colonies, MacDonnell wrote: 'I would not prefer to a stamp duty, an increase of house rate, or any taxation rendering building more costly where there was far too much overcrowding in Hong Kong.'¹⁴⁵ In his address to the Legislative Council members during the pre-legislative discussion on stamp duty legislation, MacDonnell articulated his concern over the agony of the members for the poor people, who, in looking for healthy residences were dissuaded by the high level of rates charged.¹⁴⁶ It would seem, therefore, that the introduction of stamp duty was a means of accruing public revenue so that the government could freeze house rates and stabilise accommodation rentals. The ultimate aim was to control Hong Kong's overcrowded living conditions and reduce the health hazards in the colony.

Other historical sources confirm that overcrowding contributed to the poor sanitary conditions prevailing in Hong Kong at that time and caused epidemics. In a written report, Dr William Dick, Chairman of the Special Commission appointed by MacDonnell to investigate the existence of certain endemic diseases in April 1866, stated that the fatal febrile disease usually attacked the poor but somehow the richer community was immune. The medical team

¹⁴⁴ Kenneth Pang, *History of Rates in Hong Kong* (2nd edn, Rating and Valuation Department Hong Kong) 2005, 13.

¹⁴⁵ Letter from Richard MacDonnell to Henry Herbert (10 September 1866), CO129/115, 36–37.

¹⁴⁶ Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 50.

doubted the fever was Yellow Fever as suggested by some practitioners, and was unable to identify the disease conclusively. The report directed MacDonnell's attention to a Chinese district called Taipingshan where:

Houses, into which the rays of the sun can never penetrate, were huddled together, back to back. In many cases, pigs, poultry, dogs, men, women and children live together in the same damp, small, dark, unventilated rooms in separate misery, and in filth, and it is not surprising that such a disease as we have been instructed to investigate should have been traced to a district of this city.¹⁴⁷

Those words portrayed the living conditions of the Chinese poor in 1866. This historical evidence supports MacDonnell's concern that the overcrowding of certain Hong Kong quarters was well founded in 1866. It shows that he did not contrive the housing problem so as to deceive the Secretary of State for the Colonies or the Legislative Councillors, in pursuing stamp duty implementation.

Prima facie, the evidence demonstrates that one of MacDonnell's subsidiary motives in pursuing the enactment of the stamp duty legislation was to improve the living environment by relieving the overcrowded living conditions, particularly those in the poor Chinese areas. This tentative conclusion further begs the question whether the introduction of stamp duty had the desired effect of improving living conditions in the colony. Examining the Hong Kong Stamp Ordinance 1866 reveals that it expressly stipulated that documents relating to property transactions such as leases, mortgages and conveyances would be charged stamp duty and no exemptions were given to low value properties.¹⁴⁸ MacDonnell's proposal, therefore, appeared to be ungenerous as additional tax would accumulate for householders in the form of the newly devised stamp duty even if house rates were not increased. There would not be any immediate relief for the cost of housing. Unlike the implementation of stamp duty on a broader base requiring businesses to share the colony's taxation burden by virtue of the multi-faceted incidence of stamp duty through a number of different instruments, there was no simultaneous quantifiable effect. The introduction of stamp duty might not, therefore, relieve Hong Kong's overcrowded conditions.

¹⁴⁷ *Hong Kong Government Gazette*, 'Letter with Report of the Commission appointed by His Excellency Governor Sir Richard Graves MacDonnell CB, to inquire into the existence of an Epidemic in the Colony stated to be Yellow Fever, Government Notification No 71' (Hong Kong Government 12 May 1866).

¹⁴⁸ Hong Kong Stamp Ordinance, No 12 of 1866, sch. See section 2.3.3.

In contrast, when advocating stamp duty to the Secretary of State for the Colonies, MacDonnell argued that the tax charged on properties by stamp duty would be mild compared to a persistent increase in house rates and in the long run overcrowding would be controlled and relieved. MacDonnell estimated that if stamp duty was rejected, the house rate would eventually be doubled.¹⁴⁹

Approximately a decade later, during the tenure of Governor John Pope Hennessy (in office 1877–1883), the sanitary conditions of the poorer Chinese residential districts in Hong Kong continued to deteriorate as housing prices escalated. Dr Phineas Ayres, the Colonial Surgeon, reported that sanitary conditions in 1880 were deteriorating because the one- and two-storey houses he had seen in 1874 had been demolished and rebuilt into three- and four-storey houses, resulting in more severe overcrowding.¹⁵⁰ He commented that if the underprivileged Chinese desired a healthy environment with ‘pure air, pure water, purity from damp, pure light and equable temperature’, the best way for them was to go to the gaol.¹⁵¹ This demonstrates that MacDonnell’s objective, to reduce overcrowding through implementation of the Hong Kong Stamp Ordinance 1866,¹⁵² was not fulfilled after more than a decade. The house rates did not increase with the imposition of stamp duties, but house prices did not freeze¹⁵³ as forecasted by MacDonnell.

Analysis of MacDonnell’s tax policy and why it encountered difficulty in freezing housing prices, thus reducing overcrowding in Hong Kong, yields some possible explanations. It could be that the failure was caused by the great influx of Chinese immigrants. From 1866 to 1881, the number of Chinese residents increased by 39,208 (or 32.2% increase over the previous population of Chinese).¹⁵⁴ It is possible that Hennessy’s 1877 policy allowing the Chinese to

¹⁴⁹ Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 48.

¹⁵⁰ *Hong Kong Administrative Report 1881*, ‘Hong Kong Colonial Surgeon’s Report for 1880’ (Hong Kong Government 20 May 1881).

¹⁵¹ *Hong Kong Administrative Report 1880*, ‘Hong Kong Colonial Surgeon’s Report for 1879’ (Hong Kong Government 4 May 1880).

¹⁵² No 12 of 1866.

¹⁵³ The Hong Kong Colonial Surgeon reported that overcrowding was due to the fact that land which cost HK\$5,000 in 1875 cannot be purchased in 1880 for HK\$50,000. See *Hong Kong Administrative Report 1881*, ‘Hong Kong Colonial Surgeon’s Report for 1880’ (Hong Kong Government 20 May 1881).

¹⁵⁴ G B Endacott, *A History of Hong Kong* (London, Oxford University Press 1958), 184.

buy land in certain areas previously reserved for European communities¹⁵⁵ started a vast speculation in land by the Chinese, further increasing house prices. Nonetheless, it is submitted that the most viable explanation is that immovable property transactions in Hong Kong took place in the asset market (in which items are purchased for their investment potential) rather than in the consumer goods market (in which items are purchased for consumption).¹⁵⁶ The evidence demonstrates that a tax freeze on asset goods did not necessarily lead to a price freeze of those goods. This result can be contrasted with the expectation that a tax freeze (eg customs duties) on consumption goods would lead to a price freeze of such goods.

2.2 Other circumstances influencing stamp duty law

In addition to the influences identified so far as being responsible for the introduction of the stamp duty to Hong Kong, namely enhancing revenue, restoring tax system equity and improving living conditions for the poor, the question arises whether other circumstances contributed to the introduction of this new tax into the Hong Kong fiscal system. These can be identified by appraising the associated economic, social, political and human factors.

2.2.1 Stamp duty was the only viable choice

When it was determined that a second form of tax was required, many British officials charged with decision-making regarding the form of the Hong Kong fiscal system favoured stamp duty, and that was the tax adopted. As Governor Sir Hercules Robinson (in office 1859–1865) advocated in his 1864 letter to the Colonial Office on the Hong Kong fiscal system: 'If additional taxation should be determined on, the only source which remained available without interfering with the freedom of the trade was a stamp duty similar to that imposed throughout India and the Straits Settlements'.¹⁵⁷ MacDonnell shared a similar view as he pointed out in his 1866 letter to the Colonial Office: 'If increasing the revenue in Hong Kong ever became necessary, a stamp duty was the

¹⁵⁵ Geoffrey Robley Sayer, *Hong Kong, 1862–1919: Years of Discretion* (Hong Kong, Hong Kong University Press 1975), 41; Hong Kong Government, 'Historical and Statistical Abstract of the Colony of Hong Kong 1841–1930' (3rd edn, Hong Kong, Noronha & Company, Hong Kong Government Printer, 1932), 26.

¹⁵⁶ George Cooper, *The Origin of Financial Crises: Central banks, Credit Bubbles and the Efficient Market Fallacy* (Petersfield, Harriman House 2008), 101.

¹⁵⁷ Letter from Richard MacDonnell to Henry Herbert (10 September 1866), CO129/115, 35–36.

preferable mode of effecting that object.’¹⁵⁸ Other than the view that the imposition of stamp duty would not be injurious to trade, the Governor’s written explanations did not illuminate convincingly why stamp duty was the preferred option. The answer lies in the fiscal, political, social and cultural history of Hong Kong as well as in Britain during the nineteenth century.

In order to raise revenue to fund their operations, British colonies in the nineteenth century imposed a variety of taxes apart from stamp duty, namely customs duties, excise duty and income tax.¹⁵⁹ Hong Kong adopted house rates as its first form of taxation to finance a police force.¹⁶⁰ A house rate mechanism was favoured because it did not require a declaration of income or benefit derived from immovable properties, nor did it require an inquisitorial process. Despite bitter opposition from the local population to the imposition of taxes, the Colonial Office approved the imposition of house rates in Hong Kong.¹⁶¹

Between 1845 and 1865 despite the colony being in a state of continuous financial exigency, no new branch of taxation was introduced.¹⁶² Investigating the reason, it was found that the Governors of Hong Kong faced certain constraints when formulating taxation policies during the early years of the colony. Customs duties, which were the most important taxation method being used in other British colonies at that time,¹⁶³ were rejected in Hong Kong. When Governor John Davis (in office 1844–1848) tried to raise public revenue by levying customs duties on imported wines and spirits in 1846, the proposition was met with severe opposition from the public. The public viewed such a measure as premature as the colony was not yet ready to be self-sufficient financially. More importantly, the Legislative Council (made up entirely of official members¹⁶⁴ at that time) disapproved of the proposed customs duties, pointing out that the collection of customs duties would be contrary to the proclamation of Hong Kong as a free port in 1841 by Sir Charles Elliot, the Chief Superintendent of British Trade in China and Administrator of Hong Kong when

¹⁵⁸ Ibid 35.

¹⁵⁹ Paul S Reinsch, *Colonial Administration* (London, MacMillan 1912), 95–143.

¹⁶⁰ See section 2.1.1.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Paul S Reinsch, *Colonial Administration* (London, MacMillan 1912), 95–96.

¹⁶⁴ Official members are senior Hong Kong government civil servants.

Hong Kong had just been ceded to Britain. Davis sent the proposed Ordinance together with the opposing views of the Legislative Councillors to the Secretary of State for the Colonies for comments and approval. The secretary William Gladstone (in office 1845–1846) agreed with the Legislative Councillors and customs duties on wine and spirit were rejected.¹⁶⁵

It was not just customs duties which were precluded from adoption in Hong Kong. Excise duties were not a viable revenue source for Hong Kong as Hong Kong was a place of trade only and had no natural resources, such as tin ore and rubber as in the Straits Settlements¹⁶⁶ or ivory as in Africa, that could be subject to tax upon export. Excise duties were imposed on home produced goods sold in the domestic market. Likewise, income tax was not a viable source of revenue. It was not feasible during the early colonial years as it necessitated the declaration of income and associated inquisitorial proceedings.¹⁶⁷ The Chinese community at that time was not accustomed to this kind of tax as the Chinese Qing government did not levy income taxation.¹⁶⁸ Moreover, the Chinese accounting records¹⁶⁹ would cause difficulties in the collection process. In addition, the Colonial Office's nineteenth century colonial financial policy discouraged the use of income taxation in primitive economies such as Hong Kong. In the nineteenth century, income taxation had given rise

¹⁶⁵ G B Endacott, *Government and People in Hong Kong, 1841–1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 42.

¹⁶⁶ The Straits Settlements were a group of British territories located in Southeast Asia. Originally established in 1826 as part of the territories controlled by the British East India Company, the Straits Settlements came under direct British control as a Crown colony on 1 April 1867. The colony was dissolved in 1946 as part of the British reorganisation of its Southeast Asian dependencies following the end of the Second World War. The Straits Settlements consisted mainly of the four individual settlements of Malacca, Dinding, Penang and Singapore. With the exception of Singapore, these territories now form part of Malaysia.

¹⁶⁷ See Hong Kong Hansard 16 November 1939. In the Hong Kong Legislative Council debate on the introduction of income tax in 1939, the senior unofficial member, Sir Henry Pollock spoke of the inquisitorial proceedings of income taxation which ignored the extreme privacy which centuries of tradition had accorded the inner counter of Chinese businesses. He warned that income tax, if practised in Hong Kong, might undermine the whole structure of business life. The comment was made 60 years after the introduction of stamp duty in Hong Kong which supported the estimation that in 1866, Hong Kong was not ready for income tax.

¹⁶⁸ Shao Kwan Chen, *The System of Taxation in China in the Tsing Dynasty 1644–1911* (first published 1914, New York, AMS Press 1970); Yan Xu, 'Tax History in China' (Tax Law History Conference, Centre for Tax Law, Faculty of Law of the University of Cambridge, United Kingdom, July 2012).

¹⁶⁹ See for example, Hong Kong Hansard 16 November 1939. In the Hong Kong Legislative Council debate on the introduction of income tax in 1939, the senior unofficial member, Sir Henry Pollock spoke of Chinese accounts that were radically different from those used in the West which would make it impossible to extract from them the information required to make an assessment of a firm's profits. Further it would be very costly to translate the Chinese accounts to English for the tax department's use.

to much debate and many objections even in the most advanced western nations.¹⁷⁰

Apart from the lack of other viable options, another reason for favouring stamp duty in Hong Kong was the prevalent use of this form of tax in Britain during the nineteenth century. The reasons for the widespread use of stamp duty in Britain were threefold.

First, the expansion of trade and commerce begun in Britain in the seventeenth century¹⁷¹ provided many important tax bases for levying stamp duty. By the early nineteenth century, the British Stamp Act 1804 levied stamp duties on commercial documents such as agreements, bills of exchange, promissory notes, receipts and so on.¹⁷² Stamp duty would not have been as widespread if trade and commerce had been underdeveloped at that time. Correspondingly, the efficacy of stamp duty as a revenue-raising device would have been in doubt if an agrarian society had prevailed.

Second, through an examination of the British fiscal history, historians advocated that the significant use of indirect taxes, such as stamp duty, in Britain in the eighteenth and the nineteenth centuries, was the result of an administrative revolution. The revolution refers to the establishment of a highly centralised bureaucracy staffed by salaried officers to competently implement and administer an accurate and reliable system of indirect taxation.¹⁷³ In contrast, the collection of land taxes¹⁷⁴ in Britain in the eighteenth century by unpaid provincial landowners with no formal legal knowledge led to the widespread understatement of tax liabilities, and the prevalence of evasion and

¹⁷⁰ Paul S Reinsch, *Colonial Administration* (London, MacMillan 1912), 123.

¹⁷¹ Wenkai He, *Paths toward the Modern Fiscal State* (Cambridge Massachusetts, Harvard University Press 2013), 6.

¹⁷² British Stamp Act 1804 (44 Geo 3 c 98).

¹⁷³ Wenkai He, *Paths toward the Modern Fiscal State* (Cambridge Massachusetts, Harvard University Press 2013), 13.

¹⁷⁴ For an understanding of the history of British land tax, see W R Ward, *The English Land Tax in the Eighteenth Century* (Oxford, Oxford University Press 1953).

malpractice.¹⁷⁵ Furthermore these local gentry land-tax collectors often illicitly retained a portion of the taxes collected for private their gain.¹⁷⁶

Third, the ease of taxing by stamp duty mechanisms was a key reason why Britain adopted it and continued its use. When stamp duty was first being considered in Britain in 1664, a British official had stated that the duty would be ‘insensible, un-burdensome and bring in a vast treasure’.¹⁷⁷ In the 1797 British Budget speech, Prime Minister William Pitt described stamp duty as a tax ‘easily raised, widely diffused pressing little on any particular class, especially the lower orders of society, and producing a revenue safely and expeditiously collected at a small expense.’¹⁷⁸ Likewise, tax historians observed that stamp duty was the simplest of all imposts in Britain in the nineteenth century, since the taxpayers would go to the Stamp Offices to have their written documents impressed with a stamp.¹⁷⁹ The officials in the Stamp Offices simply needed to ensure they collected the appropriate stamp duties based on the document presented. In addition, this form of indirect tax could be collected with minimum friction and expense.¹⁸⁰ Unlike income tax, stamp duty did not require any intrusive inquisitorial proceedings. People paid this innocuous tax without even noticing. The government plucked ‘the most feathers with the least squawking’.¹⁸¹ Evidence to substantiate this view can be found in an article published by the Liverpool Financial Reform Association in the mid-nineteenth century which stated that the objective of the article was to expose the ‘insidious and deceptive nature’ of stamp duty which facilitated the stamps occupying about ‘the third place in public revenue’ in 1850.¹⁸² Furthermore, the

¹⁷⁵ Wenkai He, *Paths toward the Modern Fiscal State* (Cambridge Massachusetts, Harvard University Press 2013), 14.

¹⁷⁶ L S Pressnell, ‘Public Monies and the Development of English Banking’ (1953) 5(3) *The Economic History Review New Series*, 378.

¹⁷⁷ 16 *Calendar S P Dom 1664*, 448; Edward Hughes, ‘The English Stamp Duties, 1664-1764’ (1941) 56(222) *The English Historical Review*, 234.

¹⁷⁸ 18 *Parliamentary Register 1796–1802* 26 April 1797, vol 2, 374–75.

¹⁷⁹ Chantal Stebbings, *The Victorian Taxpayer and the Law: A Study in Constitutional Conflict* (Cambridge University Press 2009), 83.

¹⁸⁰ Harold M Groves, *Tax Philosophers: Two Hundred years of Thought in Great Britain and the United States* (Madison, University of Wisconsin Press 1974), 3.

¹⁸¹ Louis XIV of France’s finance minister, Jean-Baptiste Colbert, declared that the art of taxation consists in so plucking the goose as to obtain the greatest quantity of feathers with the least possible amount of hissing. See Fred R Shapiro, *The Yale Book of Quotations* (New Haven, Yale University Press 2006), 162; Also referred to in Samuel Herbert, ‘The Taxation of the Various Classes of the People’ (1919) 82(2) *Journal of the Royal Statistical Society*, 143.

¹⁸² Liverpool Financial Reform Association, ‘The Stamp Laws, Financial Reform Tracts No 25’ (1850) *Cowen Tracts*, 143.

article observes: ‘This branch of revenue [stamp duty], although now [1850] very productive, may, by consolidating the present provision and introducing some few amendments, be rendered still more productive, and, at the same time, less vexatious and burdensome to the public.’¹⁸³ Besides the evidence just cited, indirect taxes such as stamp duty were favoured, as direct taxes occupied a large portion of the tax department officials’ time and attention, often to the exclusion of other administrative duties.¹⁸⁴

Applying the foregoing rationale as to why stamp duty was prevalent in nineteenth century Britain, it is clear why Governors Sir Hercules Robinson and Sir Richard MacDonnell singled out stamp duty as the most viable second form of tax for the colony. Essentially, Hong Kong was a trading and shipping depot of the British Empire in the Far East, which guaranteed an abundance of commercial and trading documents for the imposition of stamp duties. At that time, Hong Kong lacked resources to set up a large tax department to administer taxes. Thus, it was prudent for the colony to opt for stamp duty due to its ease of application and collection without the need to incur extensive administrative resources to manage the system.

2.2.2 Why stamp duty was not introduced earlier into Hong Kong

Britain adopted the stamp duty as early as 1670.¹⁸⁵ By the time Britain took over Hong Kong in 1842, the British stamp duty system was already well developed and tested and ready to be adopted by its colonies as required. Further, it is clear that Hong Kong was financially unstable from 1842 to 1865¹⁸⁶ and stamp duty was considered the most feasible revenue source for Hong Kong in its early colonial days.¹⁸⁷ The colony’s initial financial difficulties and the demonstrated appropriateness of stamp duty as a revenue source in the mid-nineteenth century implies that the Hong Kong government could have introduced a stamp duty system at an earlier time to ease the colony’s financial

¹⁸³ Ibid. The view was originally put forward by J Chitty in 1829, see J Chitty and John Walter Hulmes, *A Practical Treatise on the Stamp Laws with an Appendix of the Statutes, and Notes thereon* (London, Saunders and Benning Law Booksellers 1841).

¹⁸⁴ Leigh A Gardner, *Taxing Colonial Africa: The Political Economy of British Imperialism* (Oxford, Oxford University Press 2012), 8.

¹⁸⁵ British Stamp Act 1670 (22 & 23 Car 2 c 9); Edward Hughes, ‘The English Stamp Duties, 1664–1764’ (1941) 56(222) *The English Historical Review*, 234; Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 287; see section 1.5.

¹⁸⁶ See section 2.1.1.

¹⁸⁷ See section 2.2.1.

pressures. Clearly some forces delayed the introduction of stamp duty in Hong Kong for about two decades after house rates were first implemented as Hong Kong's initial form of taxation.

The first such force lay in the politics of personal preferment. Unlike his predecessors, MacDonnell came to Hong Kong towards the end of his long and already successful career in the British Colonial Service. He had been the Governor of Gambia, Lucia, St Vincent and South Australia.¹⁸⁸ He came to Hong Kong in 1866 at the age of fifty-one and with twenty years' experience as colonial Governor. He had been knighted (CB)¹⁸⁹ in 1852.¹⁹⁰

The award of a knighthood was of paramount importance to civil servants in the British Colonial Office during that era. Alexander Johnston, the first Administrator (acting in the capacity of the Governor) of Hong Kong (in office 1841–1845) wrote to the Secretary of State for the Colonies soliciting recognition for his service in Hong Kong. His request was not granted due to his perceived mediocre performance.¹⁹¹ Hercules Robinson, the fifth Governor of Hong Kong (in office 1859–1865) wrote to the Secretary of State for the Colonies complaining that he had been overlooked in the 1862 honours list despite his good service rendered in Hong Kong.¹⁹²

MacDonnell already had such an honour bestowed upon him before taking up the post of Hong Kong Governor and probably Hong Kong would be his last posting before retirement. He had his reward and had nothing to lose. Together with his strong and near authoritarian personality,¹⁹³ he pushed through the introduction of a new tax in the form of stamp duty, an unpopular policy that he believed was beneficial for the colony.

¹⁸⁸ Frank Welsh, *A History of Hong Kong* (London, Harper Collins 1997), 237–38.

¹⁸⁹ The Most Honorable Order of the Bath is a British order of chivalry founded by George I on 18 May 1725. A person would be granted an honorary title of knighthood by the monarch and admitted to the British's societies and fellowships of knights. The order consists of three classes: Knight Grand Cross (GCB), Knight Commander (KCB) and Companion (CB).

¹⁹⁰ Australian Dictionary of Biography, 'MacDonnell, Sir Richard Graves (1814–1881)' <<http://adb.anu.edu.au/biography/macdonnell-sir-richard-graves-4084>> accessed 11 May 2014.

¹⁹¹ G B Endacott, *A Biographical Sketch-Book of Early Hong Kong* (Singapore, Eastern Universities Press 1962), 59.

¹⁹² *Ibid* 51.

¹⁹³ Frank Welsh, *A History of Hong Kong* (London, Harper Collins 1997), 238.

This action could be compared to some of his predecessors. George Bonham was appointed the third Governor of Hong Kong (in office 1848–1854) when he was aged forty-four. Though Hong Kong was insolvent at that time,¹⁹⁴ Bonham refrained from implementing additional taxes,¹⁹⁵ and chose to cut expenditures in all possible ways to balance the budget. From his prior employment with the British East India Company administering the Straits Settlements, he knew Hong Kong people were taxed much more lightly than the Straits Settlements. However he refused to risk his popularity by introducing new taxes in Hong Kong.¹⁹⁶ As a result, public works such as drainage constructions were delayed and the police force was reduced.¹⁹⁷ Nevertheless, the Hong Kong community loved Bonham, as he was approachable and easy going, and more importantly, he did not pursue any vigorous unpopular tax policy. Because of his good service in Hong Kong, he was knighted in 1850.¹⁹⁸

Introducing taxes in Hong Kong during the early years of the colony would affect a Governor's reputation and career advancement. An overt example was John Davis, the second Governor of Hong Kong (in office 1844–1848). He was given the task of setting up the Hong Kong government and putting an end to the administrative chaos. Davis was also given the unpopular task of increasing colonial revenue so that Hong Kong would be self-sufficient.¹⁹⁹ He accordingly tried to implement various taxes including rates and duties on wines and spirits. This made him unpopular with British merchants²⁰⁰ and the community was against him. He resigned after bitter disagreement with British merchants in Hong Kong on taxes and other issues. Davis returned to Britain and continued with his studies at the age of fifty-three with no further colonial postings.²⁰¹

Thus the evidence shows that the introduction of any new tax in Hong Kong during the early colonial days, including the stamp duty in 1866, depended to some extent on the Governors' career situation and the honours they had

¹⁹⁴ G B Endacott, *A Biographical Sketch-Book of Early Hong Kong* (Singapore, Eastern Universities Press 1962), 32.

¹⁹⁵ *Ibid* 33.

¹⁹⁶ *Ibid*.

¹⁹⁷ *Ibid*.

¹⁹⁸ *Ibid* 30.

¹⁹⁹ *Ibid* 25.

²⁰⁰ *Ibid* 25–26.

²⁰¹ *Ibid* 29.

already obtained, or the prospect of such honours, when they were appointed as Governor of Hong Kong.

There exists a second plausible, and political, reason for the delay in the adoption of stamp duty. Governor John Davis' proposal for Hong Kong customs duties to be imposed on wines and spirits in 1846 was met with unanimous opposition from the official members²⁰² of the Hong Kong Legislative Council.²⁰³ The official members did not always rubber stamp the Governor's proposals. Occasionally, they joined the unofficial members to go against a proposal. The Colonial Office rejected the tax partly due to the office-bearer's view that it was impossible to go against the unanimous wish of the Hong Kong Legislative Council.²⁰⁴

When the Hong Kong Legislative Council examined the possibility of enacting stamp duty in 1866, none of the Legislative Council official members joined with the three unofficial members to oppose it. This might have been due to the personal charm and leadership of MacDonnell, the Governor in office. It might also have been due to a genuine and unanimous belief of the Legislative Council members that the 1866 Stamp Ordinance was well drafted and would benefit Hong Kong enormously.

There was another reason behind the delay in the introduction of stamp duty. In 1864, the Hong Kong Colonial Treasurer joined the unofficial members in voting against the military contribution demanded by Britain. Further, he seconded the unofficial members' motion to delete the military contribution from the 1865 budget. The Secretary of State for the Colonies Edward Cardwell (in office 1864–1866) was furious and reprimanded the Colonial Treasurer. When MacDonnell took office as Governor in 1866, the official members asked him if official and unofficial members of the Hong Kong Legislative Council had different privileges. More directly, they were seeking the Governor's opinion on whether they could vote against the Governor's proposal in the Legislative Council similar to the unofficial members who could cast dissenting votes.

²⁰² These consist of high-ranking Hong Kong civil servants.

²⁰³ G B Endacott, *Government and People in Hong Kong, 1841–1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 42.

²⁰⁴ Ibid.

MacDonnell astutely answered that all members could speak and vote freely. An official member should explain his reasons when he directly opposed the policy of the Secretary of State for the Colonies.²⁰⁵

Reading the letter from MacDonnell reporting the incident, Cardwell was not pleased with the Governor's position. He issued a ruling, which then became a governing principle for the official members of the Hong Kong Legislative Council. Cardwell decreed in his letter to MacDonnell dated 31 May 1866:

Her Majesty's government have the right to consider opposition by the official members of the Legislative Council to its settled policy as incompatible with retention of office, and I am equally of opinion that they are bound if required to do so, to support by their votes and not to oppose by any public act, a policy which may originate with the Governor.²⁰⁶

The message was a clear warning to the official members of the Hong Kong Legislative Council that they were civil servants of the British Colonial Service. If they voted against the Governor in the Legislative Council or publicly disapproved a policy advocated by the Governor, they had to resign. This implied that the official members could only privately voice their opposition to the Governor. The convention of official members voting as a block to support policies advocated by the colonial administration was formed.

The ruling by Cardwell in May 1866 certainly assisted MacDonnell in his introduction of the 1866 Stamp Ordinance two months later. Before the ruling, Governors had to clear three hurdles to implement the taxes proposed: Legislative Council concurrence, public support, and the approval of the Secretary of State for the Colonies. After the ruling, obtaining Legislative Council concurrence was no longer a serious problem. This also prevented the proposed taxes being rejected by the Secretary of State for the Colonies due to the unanimous Legislative Council disagreement, such as the customs duties on wines and spirits proposed by Governor John Davis in 1846. Without the ruling, stamp duty might not have been smoothly introduced in 1866. If the

²⁰⁵ Ibid 85.

²⁰⁶ Letter from Edward Cardwell to Richard MacDonnell (31 May 1866), CO129/112, 90.

ruling had been in force earlier, Governor John Davis, or some of MacDonnell's predecessors might have already successfully implemented stamp duty in the colony before 1866.

2.2.3 Early colonial social structure influencing stamp duty law

The political bargaining powers of the different strata of the Hong Kong population shaped the first Hong Kong Stamp Ordinance.²⁰⁷ There were three social strata in Hong Kong in 1866. Senior British expatriates, who were businessmen of the upper echelon, formed the upper class. British expatriates with supervisory roles in British firms and Chinese merchants formed the middle class. Chinese labourers constituted the lower class.²⁰⁸

In the 1866 Legislative Council, all unofficial members were heads of British trading firms who could influence the government's decisions. Because of their background, they were not interested in measures that were unsupportive of trade and opposed to all taxes that might affect businesses negatively. MacDonnell frankly pointed out during the stamp duty pre-legislation debates that these unofficial members 'do not represent all the colony nor even those residents who now pay more than half the revenue of the colony, for the Asiatic residents, pay 4/7th of the existing ordinary revenue.'²⁰⁹ They lacked interest in public works and social welfare, and objected to the 1866 Stamp Duty Ordinance. They considered the project of building a reservoir as 'not of such a character as to necessitate being carried out, until the ordinary revenue of the colony will admit such expenditure.'²¹⁰ The Governor pointed out that building a reservoir was urgent and important for community sanitary reasons and that stamp duty must be levied in 1866 to finance the work. He urged the unofficial members to care for their own lives by building a reservoir rapidly so as to supply water to clean up the filthy part of the colony:

One main reason for increasing water supply is to ensure means of cleansing the Chinese portion of the town. Yellow fever and cholera produced in the Chinese quarter may spread to the European quarter

²⁰⁷ No 12 of 1866.

²⁰⁸ Steve Tsang, *A Modern History of Hong Kong* (Hong Kong University Press 2004), 62–63.

²⁰⁹ Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 50.

²¹⁰ Memorial and Protest against the Stamp Ordinance 1866 (29 August 1866), CO129/115, 52.

and we endeavour therefore for our own safety to purify the abodes of our neighbours.²¹¹

British expatriates with supervisory roles in British firms had no direct representation in the Legislative Council. This middle class joined the unofficial members in signing the written protest against the 1866 stamp duty proposal. MacDonnell dismissed the written protest, as he believed the upper class expatriate employers heavily swayed the middle class British employees: 'The influence of a few leading houses here commands so many signatures of the parties immediately dependent on them.'²¹² MacDonnell received several representations from the poorer Britons who considered the action of the upper class Britons blocking stamp duty to be selfish as this would shift the tax burden to the householders through raising house rates.²¹³

Chinese merchants had the same interest as upper class Britons. They protected their business interests by objecting to stamp duty, a tax that attached handles to their economic activities directly. In 1866, this Chinese middle class was not represented in the Legislative Council. So, they wrote directly to the Governor and suggested MacDonnell drop his stamp duty plan.²¹⁴

The lower class of Chinese labourers was not represented in the Legislative Council either. A majority of them stayed in Hong Kong temporarily for the sake of economic gain. They were not educated and had very limited opportunity to voice their opinions. They relied on their *fu-mu-kuan* – 'fatherly and motherly like official' – to care about their welfare. They regarded the Governor of Hong Kong as the British version of a traditional well-respected Qing dynasty *fu-mu-kuan*. In the 1866 stamp duty implementation episode, MacDonnell himself voiced the rights of this lower class in the Legislative Council. He displayed the

²¹¹ Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 50.

²¹² Letter from Richard MacDonnell to Henry Herbert (18 October 1866), CO129/115, 261.

²¹³ Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 49.

²¹⁴ *Hong Kong Government Gazette*, 'Deputation from the Chinese Residents of Victoria waited on His Excellency Sir Richard Graves MacDonnell, CB and Commander-in-Chief at government house to receive a reply to an address [to annul the Stamp Duty Ordinance] which they had presented on 5 ultimo [5 September 1866], Government Notification No 145' (Hong Kong Government 6 October 1866).

paternalism of a British Governor who cared about the welfare of the people under his charge.²¹⁵ Such an action was important in maintaining stability in Hong Kong.²¹⁶

This social and political structure suggests reasons why the scope of the 1866 stamp duty heads of charge was less extensive and stamp duty rates were lower, as compared to the corresponding legislation of Singapore and Britain.²¹⁷ The political bargaining power in Hong Kong in 1866 was obviously skewed towards the upper class British merchants due to the prevailing Hong Kong social structure. If the Britons who were heads of companies advocated stamp duty instead of house rates in 1866, their British middle class employees would support stamp duty. Chinese merchants joined the upper class British merchants when it came to taxation matters. As Hong Kong was a British trading post, mercantile interests were of high priority. The Governor had to be mindful of the British merchants' interests.²¹⁸ To avoid opposition from the merchant upper class, the Governor would not propose an extensive stamp duty but resort to one with fewer heads of charge and lower rates.

The interests of the lower class Chinese labourers could easily be ignored. First, it was believed that they were uneducated and did not understand taxation issues. Second, the Governor was the only person who represented them in the Legislative Council. Third, most significantly, they did not demand any public works such as roads, reservoirs, hospitals or schools, as most of them were itinerants with no permanent emotional attachments to Hong Kong.

²¹⁵ There were more such well-meaning incidents in the history of Hong Kong though not related to tax; for examples, Hercules Robinson, the fifth Governor of Hong Kong (in office: 1859–65) introduced the Hong Kong cadetship. The scheme recruited young graduates from Britain to receive intensive training in Cantonese and written Chinese for two years before deploying under a fast track civil service scheme in Hong Kong. It enhanced the abilities of the senior Hong Kong policymakers to comprehend the views of the Chinese community and handle them with paternalistic kindness. Meanwhile, as the language barrier was eliminated, the government could explain its policies more accurately to the Chinese to prevent misunderstandings.

²¹⁶ P K Li, *Hong Kong from Britain to China Political Cleavages, Electoral Dynamics and Institutional Changes* (England, Ashgate Publishing Ltd 2000), 21.

²¹⁷ British Stamp Act 1815 (55 Geo 3 c 101); British Stamp Act 1870 (33 & 34 Vict c 97).

²¹⁸ It would also be an intractable pain for Hong Kong Governors if the British merchants' interests regarding taxes were not dealt with as a matter of priority. For example, see G B Endacott, *A Biographical Sketch-Book of Early Hong Kong* (Singapore, Eastern Universities Press 1962), 29. The British prominent merchants in Hong Kong hated Governor John Davis for introducing rates and proposing other taxes in the 1840s. They viewed him as a person who disregarded the wishes of the merchants. Davis once presented a cup, the Plenipotentiary's Cup, for a horse race; the merchants showed their intense feeling against him by not allowing any of their horses to compete in the race.

The body of evidence demonstrates that in the mid-nineteenth century taxes in Hong Kong were kept as low as possible as there was no social pressure on the government to provide welfare to the poor and to re-distribute wealth. Instead, merchants pressed government to implement restrained tax policies so that they could keep as much as possible the profit they earned. This ethos remained through the next hundred and thirty years of British colonial rule. The ideology of the 1866 Stamp Duty Ordinance²¹⁹ was one of the cornerstones of Hong Kong being a low tax rate jurisdiction during the hundred and fifty years of British rule.

2.3 The British origin²²⁰

The British colonisation of a large part of the world began in 1578 when Queen Elizabeth I granted a patent to Sir Humphrey Gilbert for discovery and overseas exploration.²²¹ The British colonists took with them elements of the British tax system and implemented them in their colonies.²²² Besides Hong Kong, stamp duty was imposed in North America,²²³ Canada, New Zealand, South Africa, India, Fiji, the New Hebrides, Singapore, Australia and Malaysia.²²⁴

The initial stamp duty system introduced to Hong Kong in 1866²²⁵ was based on the prevailing Singapore system,²²⁶ Singapore being a British colony at that time. It was also probable that the initial Hong Kong stamp duty regime had its origins in the British system. In order to ascertain the validity of this assertion, this section compares the key provisions of the 1866 Hong Kong Stamp Ordinance²²⁷ with the British stamp duty provisions in the nineteenth century. Specifically, the juxtaposition aims to ascertain the nature of the key British

²¹⁹ Hong Kong Stamp Ordinance, No 12 of 1866.

²²⁰ Peter Harris, *Income Tax in Common Law Jurisdictions: From the Origins to 1820* (New York, Cambridge University Press 2006), 6–7. The author provides a detailed explanation of the reasons for examining the origins of revenue law, although not specifically for stamp duty.

²²¹ Kenneth R Andrews, *Trade, Plunder and Settlement: Maritime Enterprise and the Genesis of the British Empire, 1480–1630* (Cambridge University Press 1984), 187.

²²² D Graham Hill, *Stamp Duty Rewrite: New South Wales: The Stamp Duties Bill 1997 with Commentary* (North Ryde, NSW, LBC Information Services 1997), 19–20.

²²³ See section 2.4.1.

²²⁴ D Graham Hill, *Stamp Duty Rewrite: New South Wales: The Stamp Duties Bill 1997 with Commentary* (North Ryde, NSW, LBC Information Services 1997), 19–20.

²²⁵ Hong Kong Stamp Ordinance, No 12 of 1866.

²²⁶ See section 2.1.1.

²²⁷ No 12 of 1866.

stamp duty provisions adopted in Hong Kong in 1866 and the extent to which they were implemented, as well as to establish which key British stamp duty provisions were omitted and the reasons for those exclusions.

In the process of determining whether the initial Hong Kong stamp duty system was influenced by British stamp duty tenets, and based on the preliminary assumption that Hong Kong did implement related British stamp duty principles in 1866, this section also examines the origins of the British stamp duty law. The research into the British origins of the colony's stamp duty system is expected to reveal not only the British precursor, but also the influences that originally moulded the law in Britain in the centuries before Hong Kong's 1866 adoption. The reason for investigating the British origins is that the rationale for certain modern Hong Kong stamp duty practices may not be adequately explained by solely examining the evolution of Hong Kong stamp duty from 1866 till the present time. It is postulated that an examination of the British origins of the Hong Kong stamp duty law may be able to ascertain how Hong Kong taxable instruments were selected; whether there were reasons for choosing such taxable instruments other than revenue grounds; why the modern Hong Kong Stamp Ordinance²²⁸ did not include a general anti-avoidance rule; and why the stamp duty liabilities were calculated by methods prescribed under the current Hong Kong Stamp Ordinance.²²⁹

The background to the origins identified in this section will be instrumental in informing discussion in subsequent chapters.

2.3.1 The introduction of stamp duty into Britain

In tracing the lineage of Hong Kong's stamp duty through the British stamp duty system, the antecedents of the British system must first be established. It has been seen that stamp duty was invented by the Dutch²³⁰ and was adopted by the British government in the late seventeenth century, first imposing it in 1670.²³¹ The initial British stamp duty was levied upon law proceedings,

²²⁸ Hong Kong Stamp Ordinance, c 117 (Originally No 31 of 1981).

²²⁹ Ibid. It is expected that other interesting issues may be considered along the way.

²³⁰ See section 1.5.

²³¹ British Stamp Act 1670 (22 & 23 Car 2 c 9); Edward Hughes, 'The English Stamp Duties, 1664-1764' (1941) 56(222) *The English Historical Review*, 234; Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 287; see section 1.5.

enrolled deeds, and Crown and other grants for a period of ten years. Office bearers at law courts collected the duties and paid them over to the Crown.²³² Such duties were more in the nature of fees as there was no requirement for any stamp to be applied onto the deeds or the other taxable documents. There is no evidence to suggest that the first imposition of stamp duty in Britain was for any other purpose than to raise revenue. The analysis of the event also shows the collection method had two shortcomings. First, it was inadequate in ensuring that duties were paid by the taxpayers on the relevant documents. Second, even if it had been paid, it was difficult to ensure the funds received were channelled in full to the Crown.²³³

In 1694, England introduced its first general stamp duty legislation to raise money for the war against France.²³⁴ A board was formed and Commissioners of Stamps were appointed to oversee the operation of stamp duty collection. The British Stamp Act 1694 laid down thirty-five instruments to which the stamp duty would apply.²³⁵ Taxable instruments included agreements, employment documents, admission documents as a fellow of the college of physicians, university degree certificates, probates of will, leases, conveyances on sale, passports, insurance policies and many more.²³⁶ It was specifically stated that bills of exchange and promissory notes were exempted from stamp duty.²³⁷ Compared to the 1670 British stamp duty initiative, there was a significant increase in the number of taxable documents in the British Stamp Act 1694.²³⁸ Prescribed duties for different instruments were denominated as 40s, 5s, 2s 6d, 1s, 6d and 1d.²³⁹ The appointed commissioners had six different metal dies to indicate the six different categories of payment. The six metal dies were used to emboss stamps onto documents to show that tax had been paid. Stamps were

²³² British Stamp Act 1670 (22 & 23 Car 2 c 9); Edward Hughes, 'The English Stamp Duties, 1664-1764' (1941) 56(222) *The English Historical Review*, 234; Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 286–87.

²³³ D Graham Hill, *Stamp Duty Rewrite: New South Wales: The Stamp Duties Bill 1997 with Commentary* (North Ryde, NSW, LBC Information Services 1997), 19.

²³⁴ British Stamp Act 1694 (5 & 6 Wm & Mar c 21), s 1.

²³⁵ *Ibid* s 3.

²³⁶ *Ibid*.

²³⁷ *Ibid* s 6.

²³⁸ 5 & 6 Wm & Mar c 21.

²³⁹ Old British money, £ is pounds, s is shillings and d is pennies. There were twenty shillings per pound. The shillings were subdivided into twelve pennies.

to be embossed on every piece of chargeable paper or parchment.²⁴⁰ The taxpayers were required to bring the taxable instruments to the Stamp Offices for the appointed officers to impress stamps onto the instruments.²⁴¹ The legislation did not go into detail as to how it was possible to emboss a stamp on a thick seventeenth century parchment, but the usual practice was to emboss the stamp on a piece of paper and then attach it to the parchment using glue and a metal strip.²⁴² Compared to the 1670 British stamp duty, the British Stamp Act 1694 had a much improved collection method. By requiring the paper or parchment to bear a stamp as clear evidence that the tax had been paid, the shortcoming of not being able to ensure duties were paid was overcome.²⁴³

Assessing the first Hong Kong stamp duty legislation,²⁴⁴ it is seen that the cornerstone concept of requiring stamps denoting different payment values – to be impressed by Stamp Officers on taxable instruments presented by taxpayers to signify tax payments, as introduced in the British Stamp Act 1694,²⁴⁵ – was adopted fully by Hong Kong in 1866.²⁴⁶

2.3.2 Structure of the first Hong Kong Stamp Ordinance

It was earlier noted that the British Stamp Act 1694 imposed stamp duty on thirty-five written instruments.²⁴⁷ Examination of the 1694 British Act found that it was extremely difficult to identify the documents subject to tax or to pinpoint the applicable tax levied on different instruments, as the dutiable instruments and the specified rates were densely grouped under one large and dense single paragraph in section 3 of the 1694 Act.²⁴⁸

In contrast, the 1866 Hong Kong stamp legislation presented the instruments in a separate schedule with a column denoting the taxable instruments and

²⁴⁰ British Stamp Act 1694 (5 & 6 Wm & Mar c 21), s 12.

²⁴¹ Ibid s 9.

²⁴² John Barefoot, *Great Britain Revenue* (York, J Barefoot Ltd 2002), 3. John Barefoot is a stamp dealer and J Barefoot Ltd is his stamp dealing company.

²⁴³ D Graham Hill, *Stamp Duty Rewrite: New South Wales: The Stamp Duties Bill 1997 with Commentary* (North Ryde, NSW, LBC Information Services 1997), 19.

²⁴⁴ Hong Kong Stamp Ordinance, No 12 of 1866.

²⁴⁵ 5 & 6 Wm & Mar c 21.

²⁴⁶ Hong Kong Stamp Ordinance, No 12 of 1866, s 8.

²⁴⁷ British Stamp Act 1694 (5 & 6 Wm & Mar c 21), s 3; see section 2.3.1.

²⁴⁸ 5 & 6 Wm & Mar c 21, s 3.

another column denoting the applicable tax payables.²⁴⁹ In terms of comprehensibility, this was a marked improvement compared to the first British comprehensive Stamp Duty Act.²⁵⁰ This comparison leads to the query as to whether Hong Kong adopted certain British tenets that were buried in history. If the latter is true, another query to arise is: what caused the British government to rewrite the law to improve its comprehensibility.

Hong Kong learned and benefitted from Britain's experience. During the eighteenth century, when the British government needed to add new dutiable instruments, it added new stamp duty legislation instead of revising the existing Act. Besides the formidable length of new taxable instruments, British taxpayers also found the laws confusing due to the perplexing language used by the draftsmen who tried to make the related laws as specific as possible so as to minimise tax avoidance and reliance on judicial opinions.

In response, the British government tried to overcome the obscurity of the statutes with the Stamp Act 1804.²⁵¹ Section 1 of the 1804 Act acknowledged that the existing stamp duty legislation was complex and prodigious, and cited reasons to support the commissioning of the new Act:

Whereas the several rates and duties upon stamped vellum, parchment, and paper, and upon other articles and things under care of the commissioners for managing the said duties, are very numerous, intricate and complicated, and it will tend to give facility to business, and contribute materially to the public benefit to consolidate and simplify the same.²⁵²

Essentially, the British Stamp Act 1804²⁵³ consolidated all previous stamp duty legislation and presented all taxable instruments and objects under a schedule

²⁴⁹ Hong Kong Stamp Ordinance, No 12 of 1866, sch. The Hong Kong Stamp Ordinance, No 12 of 1866 had thirty-two sections and one schedule. The schedule stipulated the twenty-one kinds of documents that were chargeable with stamp duty and the applicable rates. The 1866 schedule used a clear labelling system and had clarifications for earmarked instruments. The respective tax rates for these instruments were presented clearly. Section 6 of the Hong Kong Stamp Ordinance, No 12 of 1866 specified that the instruments denoted in the attached schedule were subjected to Hong Kong stamp duty.

²⁵⁰ British Stamp Act 1694 (5 & 6 Wm & Mar c 21).

²⁵¹ 44 Geo 3 c 98.

²⁵² Ibid s 1.

²⁵³ 44 Geo 3 c 98.

annexed to the main statute. The schedule arranged all taxable items under separate headings with their respective applicable rates.

When the time came to draft the stamp duty legislation in Hong Kong in 1866, the British practice of including a schedule of chargeable items was followed. Governor MacDonnell actually adopted the drafting method from Britain.

The present day Hong Kong Stamp Ordinance schedule only contains four heads of charge.²⁵⁴ The present schedule also often refers the reader to the main body of stamp duty legislation for clarification.²⁵⁵ It can be argued that clarity may be improved if the information is grouped in one place within the main body of the legislation. Nonetheless, the historical evidence collected shows why the present Hong Kong Stamp Ordinance²⁵⁶ maintained a separate schedule to denote heads of charge even though the substance of the schedule was reduced drastically.²⁵⁷ For historical reasons a separate schedule denoting heads of charge was necessitated in Britain around two centuries ago. Such practice was the surviving remnant of an historical evolution of the stamp duty system that had become ingrained, yet the original reason for its existence has been long surpassed in its Hong Kong manifestation.

2.3.3 Chargeable instruments of the first Hong Kong Stamp Ordinance

The first Hong Kong stamp duty legislation had twenty-one heads of charge constituting various taxable instruments.²⁵⁸ These heads of charge were incorporated into the Hong Kong stamp duty legislation in 1866 with no debate in the Hong Kong Legislative Council regarding their suitability. MacDonnell provided no detail as to why the twenty-one heads were selected when he introduced the Bill. It was not discussed in the Governor's letters²⁵⁹ to the Secretary of State for the Colonies. Even the written protests²⁶⁰ submitted by

²⁵⁴ Hong Kong Stamp Ordinance, c 117 (Originally No 31 of 1981), sch 1; see Appendices I to V for the development of taxable instruments from the twenty-one heads in 1866 to the four heads in the present day Ordinance. The present day four heads of charge are immovable property situated in Hong Kong, Hong Kong stock, Hong Kong bearer instruments, duplicates or counterparts.

²⁵⁵ Hong Kong Stamp Ordinance, c 117 (Originally No 31 of 1981), sch 1.

²⁵⁶ Hong Kong Stamp Ordinance, c 117 (Originally No 31 of 1981).

²⁵⁷ See Appendices I to V.

²⁵⁸ Hong Kong Stamp Ordinance, No 12 of 1866; see Appendix I.

²⁵⁹ Letter from Richard MacDonnell to Henry Herbert (10 September 1866), CO129/115, 32–41.

²⁶⁰ Memorial and Protest against the Stamp Ordinance 1866 (29 August 1866), CO129/115, 52–55; *Hong Kong Government Gazette*, 'Deputation from the Chinese Residents of Victoria waited

the unofficial members and Chinese merchants were not directed to any of the twenty-one categories earmarked for tax. Further, the historical reasons for introducing such heads of charge are not known.

In order to identify the rationale for including these heads of charge into the first Hong Kong Stamp Ordinance and to facilitate a clearer understanding of the law, this subsection assesses whether the reasons were embedded in the history of British stamp duty. Specifically, the subsection has two aims. The first is to examine whether the Hong Kong heads of charge, constituting various taxable written instruments, had British roots. In other words, were the Hong Kong heads of charge extracted from British Acts or did MacDonnell devise them in response to Hong Kong's particular circumstances as a British trading depot in the Far East? On the presumption that these Hong Kong taxable instruments did have British roots, the second aim is to investigate the reasons for introducing them in Britain; how and why were they chosen? This is important for enhancing the understanding of Hong Kong law as such motives were often inherited without significant deliberation, as noted in the previous paragraph.

The heads of charge prescribed for the first 1866 Hong Kong stamp duty legislation were as follows:²⁶¹

Head of charge	Rate
Head 1: Agreements ²⁶²	Fixed duty ²⁶³
Head 2: Bank notes	<i>Ad valorem</i> duty ²⁶⁴

on His Excellency Sir Richard Graves MacDonnell, CB and Commander-in-Chief at government house to receive a reply to an address [to annul the Stamp Duty Ordinance] which they had presented on 5 ultimo [5 September 1866], Government Notification No 145' (Hong Kong Government 6 October 1866).

²⁶¹ Hong Kong Stamp Ordinance, No 12 of 1866, sch.

²⁶² Taxable agreements were written agreements, minutes, memoranda or any forms of evidence of an obligation between parties. It was manifestly stated in the schedule that documents for sealing an agreement should be subject to stamp duty. Exemptions were given to: agreements for fire or marine insurance, agreements for sales of goods, agreements for sale of shares in public companies, and salary agreements between the master and the mariners of any ship.

²⁶³ A fixed duty of HK50¢ was imposed on each chargeable document.

²⁶⁴ Bank notes issued by a bank in Hong Kong for circulation in Hong Kong were taxable at ½% per HK\$100 of the average value²⁶⁴ of such notes in circulation. The stamp duty was paid to the Stamp Office every six months. The average value of the bank notes (AV) in circulation in each six month period was the sum of bank note values on the last Saturday of each month within the six month period divided by six.

Head 3: Bills of exchange	Fixed duty ²⁶⁵
Head 4: Bills of lading	Fixed duty ²⁶⁶
Head 5: Bonds ²⁶⁷	<i>Ad valorem</i> duty ²⁶⁸
Head 6: Charter parties ²⁶⁹	Fixed duty ²⁷⁰
Head 7: Transfers of shares in any public company	<i>Ad valorem</i> duty ²⁷¹
Head 8: Powers of attorney	Fixed duty ²⁷²
Head 9: Notes of protest by commander of vessels ²⁷³	Fixed duty ²⁷⁴
Head 10: Notarial acts	Fixed duty ²⁷⁵
Head 11: Receipts ²⁷⁶	Fixed duty ²⁷⁷
Head 12: Probates and letters of administration	<i>Ad valorem</i> duty ²⁷⁸

²⁶⁵ Bills of exchange and promissory notes were charged at HK\$1 if drawn singly, or HK50¢ on each part of the set if drawn in a set. In the nineteenth century, bills of exchange drawn in sets indicated they were to be drawn either in sets, or as duplicates, lest the first should be lost or miscarry. When bills were drawn in sets, each had to contain a condition that it should be payable only while the other remained unpaid. Thus, the first was payable only when the second and the third remained unpaid. The second was payable only when the first and the third remained unpaid. The third was payable only when the first and the second remained unpaid. See John Ramsay McCulloch, *A Dictionary, Practical, Theoretical, and Historical of Commerce and Commercial Navigation* (Philadelphia, T Wardle 1840), 659.

²⁶⁶ Bills of lading were charged at HK10¢ per document.

²⁶⁷ This referred to 'bonds or other obligations concerning bottomry and respondentia'. Bottomry bonds were loans obtained by shipmasters by pledging the ship as the collateral. If the principle and interest were not paid at the appointed time after the ship's safe return, the creditors would forfeit the ship. Such a loan was required when a ship needed emergency funding for repair during its voyage and the shipmaster could not contact the ship's owner to arrange funding. The shipmaster could arrange a loan by pledging the ship and executing a bottomry bond. Respondentia bonds referred to the shipmaster obtaining loans by pledging the goods on the ship under similar situations. Although there were corporate bonds in 1866 Hong Kong [see G B Endacott, *A Biographical Sketch-Book of Early Hong Kong* (Singapore, Eastern Universities Press 1962), 34], the 1866 Stamp Ordinance did not tax corporate bonds. Stamp duty payable was based on the sum 'secured'. The word 'secured' implied some collateral was necessary for the borrowing that was not akin to the requirement of a normal corporate bond. Government bonds would be exempted by the general exemption clause at the end of the schedule annexed to the 1866 Hong Kong legislation as they were classified as instruments 'made or executed by or on behalf of Her Majesty or any department of Her Majesty's Service'. See Hong Kong Stamp Ordinance, No. 12 of 1866, sch.

²⁶⁸ The stamp duty payable would be HK\$10 if the sum secured did not exceed HK\$10,000. If the sum secured was equal to HK\$10,000 or more than HK\$10,000, the stamp duty payable would be HK\$20.

²⁶⁹ Agreements for hiring a ship.

²⁷⁰ Charter parties would be subject to a fixed stamp duty of HK\$5 per document.

²⁷¹ The applicable rates were: instrument values up to HK\$1,000, HK25¢ for every HK\$100 or part thereof of the consideration; after the first HK\$1000, HK\$2 for every HK\$1,000 or part thereof.

²⁷² Powers of attorney would be taxed at a fixed rate of HK\$2 per document.

²⁷³ These documents were made before a notary public by a shipmaster to declare circumstances beyond his control during a course of a voyage such as bad weather or other extraordinary events that caused damage to the ship or cargo. The documents were to be used against the insurance underwriters.

²⁷⁴ Notes of protest were subject to a fixed stamp duty of HK25¢ per document.

²⁷⁵ Notarial acts were charged at a fixed rate of HK\$1 per document.

²⁷⁶ Exemption was given to receipts for duly stamped documents.

²⁷⁷ Receipts of more than HK\$10 would be subject to a fixed duty of HK3¢. Exemption was given to receipts for duly stamped documents.

Head 13: Conveyances property	<i>Ad valorem</i> duty ²⁷⁹
Head 14: Mortgages	<i>Ad valorem</i> duty ²⁸⁰
Head 15: Re- assignments of mortgaged property	<i>Ad valorem</i> duty ²⁸¹
Head 16: Letters of hypothecation ²⁸²	<i>Ad valorem</i> duty ²⁸³
Head 17: Duplicates or counterparts	<i>Ad valorem</i> duty ²⁸⁴
Head 18: Leases for premium	<i>Ad valorem</i> duty ²⁸⁵
Head 19: Leases for rent	<i>Ad valorem</i> duty ²⁸⁶

²⁷⁸ The applicable rates were: instrument values up to HK\$1,000, HK25¢ for every HK\$100 or part thereof of the consideration; after the first HK\$1000, HK\$2 for every HK\$1,000 or part thereof.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² Written instrument, which authorises a bank or lender to repossess and sell the pledged item in case of a default. In international trade, a letter of hypothecation enables an accepting bank to sell the shipment in case of the non-acceptance or non-payment of the associated bill of exchange by the buyer.

²⁸³ The applicable rates were: instrument values up to HK\$1,000, HK25¢ for every HK\$100 or part thereof of the consideration; after the first HK\$1000, HK\$2 for every HK\$1,000 or part thereof.

²⁸⁴ Duplicates and counterparts of any chargeable document would be subject to the same duty paid on the original document when such duty did not exceed HK50¢. If the duty chargeable on the original document exceeded HK50¢ but did not exceed HK\$10, the applicable duty would be HK\$1. If the duty chargeable on the original document exceeded HK\$10 but did not exceed HK\$20, the applicable duty would be HK\$2. If the duty on the original document exceeded HK\$20, the applicable duty would be HK\$3.

²⁸⁵ The applicable rates were: instrument values up to HK\$1,000, HK25¢ for every HK\$100 or part thereof of the consideration; after the first HK\$1000, HK\$2 for every HK\$1,000 or part thereof.

²⁸⁶ The applicable 1866 Hong Kong stamp duty for rental on a lease was:

Yearly rent	When the lease is for a period not exceeding a year	When the lease is for a period exceeding a year
HK\$	HK\$	HK\$
Below 100	0.50	1.00
100>250	1.00	2.00
250>500	2.00	4.00
500>1,000	4.00	8.00
1,000>2,500	10.00	20.00
2,500>5,000	20.00	40.00
Any additional 1,000 or any part thereof	5.00	10.00

Head 20: Leases for premium and rent

Ad valorem duty²⁸⁷

Head 21: Instruments under seal

Fixed duty²⁸⁸

The investigation of the British origins of the Hong Kong heads of charge demonstrates that taxable items, such as bonds, charter parties, mortgages, probates, conveyances of properties, leases, powers of attorney, notes of protest, notarial acts, duplicates and counterparts, instruments under seal presented in the 1866 Stamp Ordinance, were embedded in the British Stamp Act 1694.²⁸⁹

According to the 1694 British House of Commons' records, a committee was appointed by the House to formulate a bill on stamp duty to finance the war with France.²⁹⁰ However, the committee's selection criteria for the instruments were not recorded. The committee might have resolved to select items that would not be challenged widely for their suitability.²⁹¹ However, the Commons did spend much time clarifying the instruments that were included.²⁹² An example of the detail of such discussions is the duty payable on university degrees. In relation to the phrase: 'every skin, or piece of vellum or parchment, or piece of paper, upon which any register, entry, testimonial, or certificate, taken in either of the two universities, shall be ingrossed or written' is charged with a duty of 40s, a question had been raised as to whether the two universities had to pay 40s for each degree on their registers. If that was the case, each university had to pay a large sum of over £200 yearly. The Commons clarified that 40s was to be paid on every sheet or skin of the universities' registers and not based on every degree awarded.²⁹³ The rates of stamp duty were also discussed in the House of Commons. It had been doubted if degrees perceived as of 'no advantage to the graduates', such as 'Master of Arts which was thought unnecessary by many persons', should be subject to the same duty of 40s as other degrees.²⁹⁴

²⁸⁷ The stamp duty payable would be the aggregate of the taxes calculated under head 18 and head 19.

²⁸⁸ This referred to instruments under seal that were not otherwise charged under the schedule. The applicable duty was fixed at HK\$10.

²⁸⁹ 5 & 6 Wm & Mar c 21, s 3.

²⁹⁰ 11 *Journals of the House of Commons 1688-1834* 8 January 1694, 199.

²⁹¹ *Ibid.*, 5 April 1694, 151–52.

²⁹² *Ibid.*, 23 February 1694, 243–46.

²⁹³ *Ibid.* 246.

²⁹⁴ *Ibid.*

The Commons also deliberated issues related to specific exemption, such as whether exemption should be given to Bachelor of Arts degree certificates, as the related graduates were ‘not generally able to pay 40s’.

During the enactment of the first general stamp duty law in Britain in 1694, therefore, there were deliberations regarding the drafting of tax rates and exemptions. However, there was no discussion on the merits and deficiencies of individual taxable instruments denoted under various heads of charge. It can be deduced that the instruments in the British Stamp Act 1694 were selected purely for raising revenue in a period of acute need with no regard for the subject matters of charge.

The levying of stamp duty on conveyances and the transfers of company shares under the 1866 Hong Kong legislation had its origins in the British Stamp Act 1713 where such duties were imposed for the first time.²⁹⁵ The House of Commons gave no reason for the imposition of stamp duty on conveyances.²⁹⁶ The imposition of the stamp duty on share transfers, on the other hand, was attributable to the disposing of shares by the British joint stock public-private partnership, the South Sea Company,²⁹⁷ to procure cash to reduce the national debt.²⁹⁸ It may be concluded that stamp duty levied on the conveyances as well as the transfer of shares would be an additional income to the government with no other detectable auxiliary policy concerns or reservations.

Bills of exchange and promissory notes that were taxable according to the Hong Kong Stamp Ordinance 1866²⁹⁹ first appeared under the British stamp duty

²⁹⁵ British Stamp Act 1713 (13 Anne c 18), s 21.

²⁹⁶ 17 *Journals of the House of Commons 1688–1834* 22 April 1712, 246.

²⁹⁷ The South Sea Company (officially known as The Governor and Company of the Merchants of Great Britain, trading to the South Seas and other parts of America, and for the encouragement of fishing) was a British joint-stock company founded in 1711, created as a public–private partnership to consolidate and reduce the cost of national debt. The company was granted a monopoly to trade with South America, hence its name. There was no realistic prospect that trade would take place and the company never realised any significant profit from its monopoly. Company stock rose greatly in value as it expanded its operations dealing in government debt, peaking in 1720 before collapsing to little above its original flotation price; this became known as the South Sea Bubble. For a detailed historical explanation of joint-stock company see Carolyn Webber and Aaron Wildavsky, *A History of Taxation and Expenditure in the Western World* (New York, Simon & Schuster 1986), 268–69.

²⁹⁸ 17 *Journals of the House of Commons 1688–1834* 13 May 1712, 221.

²⁹⁹ No 12 of 1866.

system as a specific exemption in the British Act 1694,³⁰⁰ as they were important mercantile instruments in 1694.³⁰¹ They became taxable in the British Stamp Act 1782.³⁰² An examination of the reason behind the change found that again it lay in the need for revenue. In 1782, the North American colonists rebelled against Britain in the American Revolutionary War (fought during 1775–1783). The British government needed money for the war. Further, the British government faced urgent and enormous pecuniary imperatives from the early 1770s as Britain had been at war for most of the eighteenth century, exhausting Britain's finances. A huge sum of national debts, principal and interest repayments, had made matters worse.³⁰³ In the 1782 budget speech, the Chancellor of the Exchequer, Lord Frederick North (in office 1767–1782), estimated that the new duty imposed on bills of exchange and promissory notes would bring in much additional revenue. Meanwhile, he solicited acceptance by correcting the belief that this category of instrument, which promised a payment at a certain date, was used frequently by the poorer people³⁰⁴ at that time.³⁰⁵ The law was passed with no opposition.

Lord John Cavendish took over as the Chancellor of the Exchequer in 1783. He opened his 1783 budget speech by highlighting his task of proposing new taxes to service loan interest. Cavendish informed the House of Commons that the stamp duty imposed on bills of exchange and promissory notes introduced in 1782 had been very productive and brought in annual revenue of £56,000. Cavendish perceived the tax was far from being burdensome to society and proposed doubling the tax rate in 1783.³⁰⁶ The evidence affirms the deduction that the selection of bills of exchange and promissory notes for stamping was again solely for revenue raising with no other obvious motive.

³⁰⁰ 5 & 6 Wm & Mar c 21, s 5.

³⁰¹ Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 288.

³⁰² 22 Geo 3 c 33, s 2.

³⁰³ Chantal Stebbings, 'Tax and Quacks: The Policy of the Eighteenth-Century Medicine Stamp Duty' in John Tiley (ed), *Studies in the History of Tax Law vol 6* (North America, Hart Publishing 2013), 290.

³⁰⁴ This was an additional reason for Dowell's comment on why this class of instruments was specifically exempted in the 1694 British Act.

³⁰⁵ 15 *Parliamentary Register 1780–1796* 11 March 1782, vol 6, 422–23.

³⁰⁶ 15 *Parliamentary Register 1780–1796* 26 May 1783, vol 10, 67–68.

In addition, in 1783, Cavendish advocated a stamp duty on receipts, a head of charge that would be adopted in Hong Kong in 1866. Cavendish remarked that as an 'immense number of receipts that were (sic) given in England in a year', a massive sum of revenue could be anticipated.³⁰⁷ In order to take care of the poor, he proposed an exemption on receipts of less than 40s as the poor seldom had large sum receipts.³⁰⁸ The non-revenue reason for introducing stamp duty on receipts was 'to make people more regular in their payments and be of infinite use to trade in general'.³⁰⁹ Cavendish did not explain why the new tax would make people settle their bills more regularly. An educated conjecture would be that the prescribed progressive tax rates were based on the amount of the receipt.³¹⁰ This would encourage businesses to settle the bills regularly rather than accumulating a large sum. The stamp duty on receipts was introduced under the British Stamp Act 1783 with no opposition in the Parliament.³¹¹ Nonetheless, it proved to be very unpopular with shopkeepers. Apparently, the public did not agree that the stamp duty on receipts would enhance regular settlements of bills. The public perceived the tax was detrimental to trade.³¹² The evidence demonstrates that revenue-raising was the key impellent behind the introduction of receipts as a chargeable instrument. Cavendish attempted to give a non-financial reason for the duty on receipts but this was proved fallacious.

The investigation of the British origins of bank notes³¹³ that were included as chargeable in the Hong Kong Stamp Ordinance 1866³¹⁴ found that they first appeared in the British Stamp Act 1799.³¹⁵ The reason why bank notes were included in the British stamp duty system lies in the connection between the

³⁰⁷ Ibid 68.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Ibid 68–69.

³¹¹ British Stamp Act 1783 (23 Geo 3 c 49).

³¹² Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 292.

³¹³ Paper currency was first developed in Tang Dynasty China during the seventh century, although true paper money did not appear until the eleventh century, during the Song Dynasty in China. The usage of paper currency later spread throughout the Mongol Empire. European explorers such as Marco Polo introduced the concept in Europe during the thirteenth century. See Marco Polo, *The Travels of Marco Polo, a Venetian, in the Thirteenth Century: Being a Description, by that Early Traveller, of Remarkable Places and Things, in the Eastern Parts of the World* (William Marsden tr, Cox and Baylis 1818), 353.

³¹⁴ No 12 of 1866.

³¹⁵ 39 Geo 3 c 107.

history of bank notes and the history of stamp duty. The Bank of England was established in 1694 to raise money for King William III's war against France. In 1696, coins for £1 and above were made of gold. The Bank of England started to issue notes which could be redeemed for gold or coinage. The notes were not widely circulated due to their large denomination.³¹⁶ In 1797, there were bank runs on the Bank of England caused by the uncertainty of the war. This drained its bullion reserve and the bank was forced to stop paying out gold for its notes. Instead, it issued small denomination £1 and £2 notes for circulation.³¹⁷ These bank notes were negotiable instruments in the form of bills of exchange and promissory notes. Stamp duty had been levied on commercial promissory notes since 1782. With the widespread use of bank notes, British Prime Minister William Pitt (in office 1783–1801) decided to subject them to tax. The British Stamp Act 1799 stipulated that stamp duty should be paid on bills of exchange and promissory notes for small sums of money as indicated on the instruments issued.³¹⁸ Banks collected the stamp duty and remitted it to the government periodically.³¹⁹ It is clear that the only reason bank notes attracted stamp duty was that they could potentially bring in vast revenue. No regulatory motive is apparent.

The discussion indicates that the lack of political resistance allowed the British government to select chargeable instruments freely without the need to conduct in-depth parliamentary examination on the merit and deficiency of each selected instrument. Further research into the reasons for the general lack of parliamentary debate on this aspect discovered that British Stamp Acts charging written instruments were usually passed for three reasons. First, there

³¹⁶ At around 1696, it was decided not to issue any notes for sums of less than £50. The notes were not widespread as the smallest denomination of £50 was a large amount at that time. By 1745 notes were being printed in large denominations ranging from £20 to £1,000 which made the notes still uncommon. In 1759, gold shortages caused by the French and Indian Wars forced the Bank of England to issue a £10 note for the first time. The first £5 notes followed in 1793 at the start of the war against France.

³¹⁷ For a history of bank notes and the related banking practices see Bank of England, 'A Brief History of Banknotes' <www.bankofengland.co.uk/banknotes/pages/about/history.aspx> accessed 7 May 2014; Davies Glyn, *A History of Money from Ancient Times to the Present Day* (Cardiff, University of Wales Press 2002); R D Richards, *Early History of Banking in England* (New York, Routledge 2012).

³¹⁸ British Stamp Act 1799 (39 Geo 3 c 107), s 1.

³¹⁹ *Ibid* s 3.

was a genuine need for revenue for wars and to service the national debt.³²⁰ Treasury officials and politicians stressed the importance of steady repayment of the national debt so that loans would be forthcoming in times of emergency.³²¹ Second, stamp duty was of least importance as compared to customs duties and excise at that time.³²² As clear evidence, there were no debates when North and Cavendish introduced stamp duty on bills of exchange and receipts in their budget speeches in 1782 and 1783, respectively.³²³ The members of the British Parliament instead concentrated on additional custom duties that were proposed concurrently on various goods. Third, nothing was perceived as wrong in using taxation for purely financial purposes during that period, in contrast to modern taxes where the government would try to link it to some non-financial imperatives.³²⁴

The body of evidence shows that all Hong Kong heads of charge constituting various taxable instruments introduced in 1866 were extracted from the British Acts. The evidence also points to the forces behind the selection of taxable instruments for British stamp duty that were eventually adopted by Hong Kong. For stamp duty to be effective and efficient, British politicians would select instruments that were most often used in order to generate vast tax revenue. There was no hidden agenda detected and no doubt the need to raise revenue was the key driver for the selection of the instruments. However, to a certain extent, the politicians also evaluated whether the selected instruments would affect the poor and whether they would cause public inconvenience. Other than that, there was no distinct policy in selecting specific written instruments to be included for stamp duty in Britain from 1694 to 1799. The indications are suggestive that Hong Kong inherited these values.

³²⁰ See Martin Daunt, *Trusting Leviathan: The Politics of Taxation in Britain, 1799–1914* (Cambridge University Press 2001), 47. The debts rose from £2 million in 1688 or about 5% of the GNP to £834million in 1815 or over twice the size of GNP.

³²¹ Martin Daunt, *Trusting Leviathan: The Politics of Taxation in Britain, 1799–1914* (Cambridge University Press 2001), 375.

³²² Chantal Stebbings, 'Tax and Quacks: The Policy of the Eighteenth-Century Medicine Stamp Duty' in John Tile (ed), *Studies in the History of Tax Law vol 6* (North America, Hart Publishing 2013), 301.

³²³ See 15 *Parliamentary Register 1780–1796* 11 March 1782, vol 6; 15 *Parliamentary Register 1780–1796* 26 May 1783, vol 10.

³²⁴ In fact in the twentieth century some tax philosophers held that taxation should not be used for non-financial aims as 'to mix up with one very important objective another different and perhaps incompatible one is to run the risk of failing in both.' See Harley L Lutz, *Public Finance* (New York, D Appleton and Co 1929), 313; C F Bastable, *Public Finance* (London, Macmillan and Co 1927), 336.

2.3.4 The initial regulations relating to jurisdictions subject to tax

In this subsection, the historical British treatment of instruments with foreign elements will be examined. The aim is to analyse the historical development of the British principles regulating the imposition of stamp duty on such instruments before the 1866 Hong Kong introduction of stamp duty. The British tenets will be compared with the initial Hong Kong law to assess the extent to which Hong Kong had adopted these tenets. Besides achieving the foregoing, the investigation of the British origin and the juxtaposition of the British and Hong Kong positions in 1866 provides an important platform for the analysis of the Hong Kong development in this area in the next 130 years. It is also the aim of this investigation to exemplify the effectiveness of the initial Hong Kong provisions in regulating the taxing of instruments with a foreign element.

In modern tax law, for instruments tinged with foreign elements to be subject to a country's stamp duty law, there must be some minimum connection³²⁵ between the jurisdiction imposing the duty and the taxpayer or the instruments concerned. Contemporary principles devised for income taxation purposes – the source principle, residence principle and citizenship principle³²⁶ – are also applicable for stamp duty analysis.

The source principle refers to a country taxing all (external) activities having an economic nexus with the country. The residence principle refers to a country taxing all activities of a person who resides within that country regardless the location of the activities. The citizenship principle refers to a country taxing their citizens on their worldwide activities regardless of their place of residence.³²⁷

The examination of historical British stamp duty legislation and parliamentary records indicates that in Britain, the tradition of levying stamp duty on written instruments with foreign elements commenced in 1783.³²⁸ To raise revenue for the British Treasury, Chancellor of the Exchequer, Lord John Cavendish (in office 1783), imposed stamp duty on foreign bills of exchange³²⁹ in addition to

³²⁵ Christiana Panayi, *Double Taxation, Tax Treaties, Treaty-Shopping and the European Community* (Netherlands, Kluwer Law International 2007), 1.

³²⁶ Ibid.

³²⁷ Ibid 2–5.

³²⁸ British Stamp Act 1783 (23 Geo 3 c 49), s 2.

³²⁹ A foreign bill of exchange was drawn in one country and made payable in another.

stamp duty on bills of exchange³³⁰ which had been introduced in 1782.³³¹ Cavendish remarked in his 1783 budget speech that ‘British legislation had a right to lay tax on all bills drawn here to be sent abroad’³³² but ‘had no right to levy impositions on bills drawn abroad.’³³³ It is clear from Cavendish’s speech that his intention was to tax such instruments based on the source principle. Taxpayer’s residence and citizenship were irrelevant.

Investigating subsequent British development it is found that there was no material promulgation of stamp duty legislation in respect of jurisdictions subject to tax from 1783 to 1866. The only connected legislation was the British Stamp Act 1821 which provided that deeds executed in England relating to property in Ireland are to be stamped.³³⁴ Other than that, the 1821 Act did not really enhance the understanding of how to determine the jurisdictions subject to tax for taxable instruments. Further investigation of English court cases decided before 1866, found for example, in *Ximenes v Jaques*,³³⁵ that when an agreement was not made within Britain, it would not be subject to stamp duty. In *Winbled v Malmberg*,³³⁶ it was held that:

The articles of a foreign ship, made abroad, regulating the wages of the sailors, even where the sailors have been hired in London, and which articles are lodged with the consul in London, may be given in evidence of the agreement for the hiring and wages to the sailor, without being stamped.

During 1783 to 1866, only sporadic court cases added to the knowledge of the subject matter relating to agreements. Further, it can be observed from these cases that the Stamp Act did not affect those agreements made outside Britain.

The Hong Kong Stamp Ordinance 1866³³⁷ made foreign bills of exchange subject to stamp duty. Two types were rendered liable, namely bills drawn within but payable out of the colony; and bills drawn out of the colony which

³³⁰ An inland bill of exchange was one that was both drawn and made payable in the same country.

³³¹ British Stamp Act 1782 (22 Geo 3 c 33), s 1. See also section 2.3.3.

³³² 15 *Parliamentary Register* 1780–1796 26 May 1783, vol, 1068.

³³³ *Ibid.*

³³⁴ 1 & 2 Geo 4 c 55.

³³⁵ (1795) 170 1 Esp 311.

³³⁶ (1796) 170 1 Esp 454.

³³⁷ No 12 of 1866.

shall be accepted, endorsed, transferred, paid or otherwise negotiated within the colony.

Analysing the provisions shows that Hong Kong's first stamp duty legislation inherited the British ideology promulgated in 1783 which favoured the use of the source principle. A material difference detected was that the jurisdiction subject to tax was significantly wider under the Hong Kong stamp duty law in 1866 than under British law in 1783, which latter only imposed stamp duty on foreign bills of exchange drawn in Britain and sent out of Britain. MacDonnell did not give an explanation for the departure from the existing British principle. It can be surmised that he simply wanted to raise extra revenue.

The 1866 Ordinance³³⁸ did not specifically clarify the tax treatment of the remaining chargeable instruments with probable foreign elements. Some hypothetical examples, which the law did not clearly focus on, were transfers of Hong Kong company shares completed overseas; conveyances, mortgages, leases executed in Hong Kong in respect to overseas properties; and instruments under seal executed overseas for obligations related to Hong Kong. The incomplete law might have given rise to noncompliance.³³⁹ Nonetheless, it was unfair to blame MacDonnell for a legislative oversight in formulating the first Hong Kong stamp duty legislation as clearly the parent legislation lacked the relevant provisions. The analysis of the British and Hong Kong stamp duty laws highlighted the deficiency in this area.³⁴⁰

2.3.5 Duty computation methods

Evaluating the first 1866 Hong Kong Stamp Ordinance with regard to stamp duty computation methods, it can be seen that when MacDonnell introduced the first stamp duty legislation in Hong Kong, he embraced both the fixed rates regardless of transaction values and the *ad valorem* rates.³⁴¹ Since the substance of the stamp duty law was adopted from Britain, it was likely that the calculation methods would also be imported wholesale to Hong Kong. In order

³³⁸ Hong Kong Stamp Ordinance, No 12 of 1866.

³³⁹ Not only was revenue on these instruments lost, the compliance confusion, if it had led to a culture of disobedience among taxpayers, would have potentially affected the sustainability of the Hong Kong stamp duty system in the long run.

³⁴⁰ This issue is examined in Chapter 4 relating to the Hong Kong stamp duty development in the quest for stamp duty system sustainability. See section 4.2.3.

³⁴¹ See section 2.3.2.

to assess this surmise and to understand these methods, it is necessary to see how stamp duty computation methods evolved in the British parent legislation.

The 1694 British Act³⁴² to a certain extent was a tax on the quantity of paper forming the chargeable document. It was stipulated clearly in the Act that every piece of paper should be stamped or marked with payment applicable to the instrument.³⁴³ Specifically, the charging sections usually commenced with the instruction: 'For every skin or piece of vellum or parchment, sheet or piece of paper upon which ...' brought to the realm of British stamp duty 'shall be ingrossed or written, the sum of' certain fixed tax rates, regardless of transaction value.³⁴⁴ The initial 1694 governing principle for stamp duty rates was that there should be one fixed rate prescribed for one class of instrument. The fixed rate was to be levied on each and every page of that instrument to arrive at the total tax payable.³⁴⁵

Consequently, stamp duty rates were increased based on the length of the instrument and not on the value of the transaction denoted by the instrument.³⁴⁶ Records of the British House of Commons offered no explanation why the British stamp duty rates were originally based on the quantity of paper used. A conjecture could be that taxes should be paid in proportion to the attestation service rendered by the stamp duty officer as he embossed stamps onto each page of the chargeable document. Another possible reason is that it was just for administrative ease; that is, the government perceived that it was simpler to count sheets of paper rather than to quantify transactional values from the documents in order to levy taxes.

However, when stamp duty rates were based on the number of sheets of paper used, total stamp duty liabilities would depend on fonts, styles, formats and languages used for the documents. In short, the law introduced a degree of inequity into the stamp duty system. Thus, it was also unavoidable that taxpayers would seek to reduce tax liabilities by curtailing the length of the

³⁴² 5 & 6 Wm & Mar c 21.

³⁴³ British Stamp Act 1694 (5 & 6 Wm & Mar c 21), s 7.

³⁴⁴ Ibid s 3.

³⁴⁵ Ibid.

³⁴⁶ Not all chargeable documents would have intrinsic values. For example, it was not possible to attach values to marriage certificates and degree certificates.

documents. In order to control such tax avoidance activities, the British Stamp Act 1694 specified that documents should be 'written in such manner as they have been usually accustomed to be written.'³⁴⁷ In certain instances, the governments of British colonies adopting such a charging basis had to state in great detail the size of paper permitted and the maximum number of words on each sheet of paper to counter noncompliance. As clear evidence, the 1760 Jamaican Stamp Act, a related law in the then British colony of Jamaica, stated the following:

The sheet to be deemed a sheet and to contain forty lines of writing in each sheet and each line to be allowed as if continued from one edge of the paper to the contrary edge and to contain twenty eight words in each line and no more on paper commonly called or known by the names of post paper pro patria; and foolscap paper or any paper vellum or parchment of the same size one side of the sheet to be deemed a sheet and to contain twenty four lines in each sheet and each line to be allowed as continued from one edge of the paper to the contrary edge and to contain twenty words in each line and no more.³⁴⁸

These rules to counter noncompliance, necessitated by rates based on document length, caused considerable inconvenience to the taxpayer when drafting chargeable documents and weakened voluntary tax compliance. Indeed, intricate stamp duty rules to counter noncompliance in this context, encouraged stamp duty noncompliance due to the difficulties in adhering to the stamp duty guidelines. Further, the collection cost incurred to ensure compliance was large as additional manpower was needed to audit the formats as well as the styles of the documents to ensure their conformity with the specified regulations.

Despite the shortcomings involved in adopting fixed rates based on the number of sheets of paper as identified above, this practice existed in Britain for one hundred and ten years from 1694 to 1804 due to public revenue exigencies. This prompts a consideration of the impetus that drove the British stamp duty

³⁴⁷ British Stamp Act 1694 (5 & 6 Wm & Mar c 21), ss 11 & 15.

³⁴⁸ Lynne Oats and others, 'Taxing Jamaica: The Stamp Act of 1760 & Tacky's Rebellion' 2014 12(1) *eJournal of Tax Research*, 175.

development to phase out the practice completely in 1804 and the circumstances that facilitated its abolition

The British Stamp Act 1713³⁴⁹ was central to the philosophy of stamp duty tax rates. The Act stipulated that, for some heads, stamp duties could only be collected if certain pre-set transactional values were exceeded. For example, it provided that:

For every skin or piece of vellum or parchment, or sheet or piece of paper, upon which any grant of office or employment in Great Britain, which shall be above the value of fifty pounds sterling per annum shall be engrossed or written, the sum of forty shillings sterling.³⁵⁰

This could be the official commencement of charging stamp duty based on transaction value instead of the length of the document. However, it could be argued that this was only a specific exemption so as not to affect the poor.

The undisputed emergence of levying stamp duty on the basis of transaction values occurred in the late eighteenth century when British legislators initiated some measures to take into account transaction values when formulating stamp duty tax rates for certain heads of charge. As clear evidence, it was specified in the British Stamp Act 1782³⁵¹ with regard to stamp duty on bills of exchange that:

For every piece of vellum or parchment, or piece of paper, upon which any inland bills of exchange, promissory note, or other note payable otherwise than upon demand, shall be ingrossed, written, or printed, where the sum expressed therein, or made payable thereby, *shall not amount to the sum of fifty pounds*, there be charged a stamp duty of *three pence*.

..., *shall amount to the sum of fifty pounds or upwards*, there be charged a stamp duty of *six pence*.³⁵²

³⁴⁹ 13 Anne c 18.

³⁵⁰ British Stamp Act 1713 (13 Anne c 18), s 21.

³⁵¹ 22 Geo 3 c 33.

³⁵² British Stamp Act (22 Geo 3 c 33), s 1.

This was the inception of *ad valorem* rates for stamp duty. Stamp duty rates were based on transaction values denoted by the chargeable instruments.

It is seen that at this point there were two principles governing stamp duty rates in Britain: the length of the instruments with fixed rates, or the length of the instruments combined with *ad valorem* rates on transaction values denoted by the instruments. The practice of levying stamp duty based on the length of documents remained in force.

Advancing further in the direction of *ad valorem* stamp duty charges, Prime Minister William Pitt (in office 1783–1801) obtained approval from the British Parliament to apply a full *ad valorem* scale for bonds in 1797. He introduced a table of charge ranging from 10s for bonds not exceeding £100 to £5 for bonds exceeding £100. This was more detailed than the two-tiered charge previously used for some heads of charge. Another major reform put forward by Pitt was abandoning the concept of charging stamp duty on the length of deeds. Pitt obtained parliamentary consent to levy stamp duty on the deed itself regardless of the length of the deed.³⁵³ This was the first time in the history of British tax that the charge to stamp duty was based on the document as a whole and not on the pieces of vellum, parchment or paper that made up the document.

Pitt did not explain his landmark 1797 changes to the duty computation method.³⁵⁴ Investigating further, the acceptance of the *ad valorem* duty concept in late eighteenth century Britain was probably due to the influence of Adam Smith's principle of proportionality in taxation,³⁵⁵ as Pitt's fiscal view generally followed Adam Smith's taxation principles.³⁵⁶ In particular, the notion of an *ad valorem* duty conformed to Adam Smith's first maxim of taxation that taxes should be equal or equitable, which suggested that the ability to pay and the benefits received were keystones in determining how the British government should ensure that people made their tax contributions. The establishment of *ad*

³⁵³ British Stamp Act 1797 (37 Geo 3 c 90); Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 293–94.

³⁵⁴ 18 Parliamentary Register 1796–1802, 26 April 1797, vol 2, 375–78.

³⁵⁵ Harold M Groves, *Tax Philosophers: Two Hundred years of Thought in Great Britain and the United States* (Madison, University of Wisconsin Press 1974), 15.

³⁵⁶ Chantal Stebbings, 'Tax and Quacks: The Policy of the Eighteenth–Century Medicine Stamp Duty' in John Tiley (ed), *Studies in the History of Tax Law vol 6* (North America, Hart Publishing 2013), 292.

valorem rates facilitated the abolishment of rates based on document length in Britain.

By virtue of the British Stamp Act 1804,³⁵⁷ Prime Minister Henry Addington (in office 1801–1804) put a complete stop to the British practice of levying stamp duty based on the length of the document. The conventional words, ‘for every piece of’, that appeared in all British stamp duty charging sections were deleted.³⁵⁸ The schedule annexed to the British Stamp Act 1804 specified the fixed rates and *ad valorem* rates chargeable to the whole document. Investigating the reason for the complete departure from the concept of levying stamp duty based on document length and shifting the focus to the use of the *ad valorem* basis, Addington’s remarks in the British Parliament were particularly revealing.³⁵⁹ Addington stated that there were three objectives to his Act of 1804: ‘First, an augmentation of the duties; next, a classification of those duties; and thirdly the necessity of subjecting the persons liable to pay those duties to a tax *ad valorem*.’³⁶⁰ Addington further commented that the members of the Parliament should turn their ‘attention to the *ad valorem* duty, which he was satisfied would be productive of much benefit to the revenue.’³⁶¹ Addington did not disclose the proof that he was relying upon to justify his postulation that *ad valorem* duty would raise more revenue than imposing duties based on document length. It could be conjectured that the statistical analysis presumably made available to him on the effect of imposing *ad valorem* stamp duty from 1797 to 1804, facilitated his decision.

The evolution of British stamp duty calculation methods during the eighteenth century to the early nineteenth century relied upon two key drivers. The first driver was the demand for taxpayer equity in imposing stamp duty based on the principle of ability to pay. The second driver for the legislative changes was the need to enhance revenue. Perhaps, the second driver became more significant than the first after the British government realised that imposing stamp duty on an *ad valorem* basis could substantially enhance revenue.

³⁵⁷ 44 Geo 3 c 98.

³⁵⁸ British Stamp Act 1804 (44 Geo 3 c 98), s 2.

³⁵⁹ *House of Commons Parliamentary Debates* 2 July 1804, series 1, vol 2, col 921–22.

³⁶⁰ *Ibid.*

³⁶¹ *Ibid.*

The body of evidence shows that the stamp duty computation methods implemented under the first Hong Kong Stamp Ordinance³⁶² were derived from the experience gained during the 173 year evolution of British stamp duty (1694 to 1866). Most of the anomalies were filtered out before the Hong Kong adoption. The study of the Hong Kong Stamp Ordinance 1866³⁶³ indicates that from the outset, duties were not imposed based on the length of documents. The evaluation of the Ordinance also reveals that more duties were based on an *ad valorem* basis than a fixed rate basis. Undoubtedly, MacDonnell tried to impose *ad valorem* rates whenever feasible and where taxpayer convenience would not be impaired. The evidence verifies that this was significantly influenced by the British history of stamp duty computation methods which had revealed that *ad valorem* duties effectively enhanced equity as well as revenue.

In this context it is necessary to conduct a survey of modern classifications of *ad valorem* stamp duty rates in order to classify and identify the precise nature of the *ad valorem* rates initially used in Hong Kong, because in modern times, the term *ad valorem* stamp duty can have many different meanings with a variety of structures.

An analysis of contemporary stamp duty tax rates prescribed in Hong Kong, Taiwan, Korea, Japan, Australia and Britain reveals at least six categories of *ad valorem* stamp duty rates: *ad valorem* (standard rate basis),³⁶⁴ *ad valorem* (static percentage basis),³⁶⁵ *ad valorem* (cumulative standard rate basis),³⁶⁶ *ad valorem* (standard rate with static percentage basis),³⁶⁷ *ad valorem* (progressive

³⁶² Hong Kong Stamp Ordinance, No 12 of 1866.

³⁶³ No 12 of 1866.

³⁶⁴ Example:

Transactional values	Duty Payable
\$1 – \$1,000	\$5
\$1,001 – \$2,000	\$10
\$2,001 – \$3,000	\$20
\$ 3,001 – \$4,000	\$25

³⁶⁵ Example:

2% on transaction value.

³⁶⁶ Example:

\$2 for every \$100 or part thereof of the consideration up to \$1,000 and \$20 for every \$1,000 or part thereof after the first \$1,000.

³⁶⁷ Example:

\$50 plus 3% on transaction value.

percentage basis)³⁶⁸ and *ad valorem* (standard rate with static percentage and progressive percentage basis).³⁶⁹

Applying this classification, it is seen that in the first Hong Kong Stamp Ordinance, *ad valorem* (standard rate basis) was applied to bonds, probates, conveyances, mortgages and letters of hypothecation and leases. The *ad valorem* (static percentage basis) was applied to bank notes only. These were the least complicated types of *ad valorem* duty.

The conclusion to be drawn is that in Hong Kong, MacDonnell made the calculation of tax payable easy for taxpayers by keeping the calculation methods simple in the first stamp legislation. This enhanced the sustainability of stamp duty by minimising the potential for noncompliance.³⁷⁰

2.3.6 Methods of collection

Effective collection methods strengthened a tax system while drawbacks in the law hindered collection efficiency and effectiveness. Given the foundation of Hong Kong stamp duty was the British stamp duty law, it was also probable that British collection methods would have been imported into the colony. It must be ascertained to what extent the British collection principles were adopted by the first Hong Kong Stamp Ordinance, identifying any variations, and examining the reasons for those variations in order to ascertain the impulses that triggered them.

³⁶⁸ Example:

Transactional values	Applicable tax rates
\$1 – \$1,000	2%
\$1,001 – \$2,000	3%
\$2,001 – \$3,000	3.5%
\$ 3,001 – \$4,000	4%

³⁶⁹ Example:

Transactional values	Applicable tax rates
\$1 – \$2,000,000	\$100
\$2,000,001 – \$2,351,760	\$100 + 10% of excess over \$2,000,000
\$2,351,761 – \$3,000,000	1.5%
\$3,000,001 – \$3,290,320	\$45,000 + 10% of excess over \$3,000,000
\$3,290,321 +	2.25%

³⁷⁰ Nevertheless, in the next 130 years, the Hong Kong system adopted the *ad valorem* (standard rate with static percentage basis) and the highly complicated *ad valorem* (standard rate with static percentage and progressive percentage basis). The reason to the changes will be discussed in Chapter 3. See section 3.4.5.

It has been seen that when stamp duty was first enacted in Britain in 1694, the Stamp Act provided that the taxpayers were required to bring the chargeable documents to government Stamp Offices for the stamp duty officers to emboss stamp the documents to signify tax payments.³⁷¹ The British Stamp Office also distributed stamped papers, namely a piece of paper bearing a pre-printed revenue stamp,³⁷² to the public and collected the duty in that way. The stamped papers could be used for documents requiring stamping, such as leases, agreements and receipts. Taxpayers could purchase the stamped papers when needed or stock them for future use. Furthermore, it is found that the British government also distributed stamped papers prepared in London for American colonies during the 1765 implementation of the American Stamp Act.³⁷³

The examination of British Stamp Acts and the related parliamentary records distinguishes a striking evolution in the stamp duty collection methods in Britain. This was the adoption of Sir Rowland Hill's penny postage principle into the revenue stamp system in 1853 by William Gladstone when he was Chancellor of the Exchequer.

Before January 1840, it was the usual practice for the recipient to pay postage upon delivery of a letter. Postage was charged according to the number of sheets and the distance travelled. The delivery cost could not be recovered if the recipient was unable or unwilling to pay. Hill proposed using a small-sized paper covered with glue at the back to indicate pre-payment of postage by the sender. The use of an adhesive stamp was a revolutionary idea. For convenience, it was resolved that a standard rate of one penny would be charged to mail a half-ounce letter between any Post Offices in Britain. The very first adhesive stamp with the face value of one penny, the Penny Black,³⁷⁴ was issued in Britain on 1 May 1840.³⁷⁵

³⁷¹ British Stamp Act 1694 (5 & 6 Wm & Mar c 21), s 9.

³⁷² Mackay James, *Philatelic Terms Illustrated* (4th edn, London, Stanley Gibbons 2003), 147.

³⁷³ Hermann Ivester, 'The Stamp Act of 1765 - A Serendipitous Find' (2009) XX(3) *The Revenue Journal*, 87.

³⁷⁴ As the name implied it was a black-coloured stamp which featured a profile of Queen Victoria with a value of one penny.

³⁷⁵ John Powell, *Great Events from History: The 19th Century 4 vols* (New York, Salem Press 2006), vol 2, 643, <http://salempress.com/store/pdfs/great_events_from_history_19th.pdf> accessed 15 June 2014; See generally Roland Hill, *The Life of Sir Rowland Hill and the History of Penny Postage* (London, Thos De La Rue Co 1880).

Thirteen years later, Gladstone announced a landmark alteration to Britain's stamp duty collection method, articulating his reasons for change in the 1853 budget speech.³⁷⁶ A few stamp duty collection principles could be inferred from Gladstone's budget speech. Essentially, he listed factors that intensified stamp duty noncompliance relating to written instruments such as immense burdens, annoyances and payment inconvenience. He believed convenient processes would enhance stamp duty compliance.

Borrowing from Hill's postage reform, Gladstone created the penny tax system to improve the convenience of tax payment, which would in turn enhance compliance. The penny tax system had two important features.

First, instead of bringing the receipts to designated Stamp Offices to be stamped, or producing receipts on stamped papers with the designated rates, the penny tax system allowed taxpayers to pay tax by applying adhesive revenue stamps onto the receipts. To avoid the same stamp being used in future transactions, taxpayers were required to sign on the adhesive stamps to signify usage. Taxpayers' signatures on the stamps indicated tax had been properly paid and the documents were legally binding.

Second, the penny tax system replaced the complicated progressive rates system previously in used. Instead of charging 3d for receipts between £5 and £10 and escalated upwards by a scale of eight steps to a maximum of 10s for receipts for more than £1,000,³⁷⁷ the penny tax system charged a fixed rate of 1d for receipts of £2 or more.³⁷⁸

Gladstone believed that by providing a convenient tax collection environment through levying a low fixed rate penny tax on daily transactions, tax compliance would be encouraged. Though tax rates had been reduced, due to economies

³⁷⁶ *House of Commons Parliamentary Debates* 18 April 1853, series 3, vol 125, col 1406.

³⁷⁷ The eight steps of duty rate were 6d, 1s, 1s 6d, 2s 6d, 4s, 5s, 7s 6d and 10s. See *House of Commons Parliamentary Papers* 6 April 1853, 'A Return of the Number of Stamps for Receipts, at each Rate, issued to the Public by the Office of Inland Revenue and its Distributors throughout the United Kingdom, for Three Years ended the 5 January 1853' series Accounts and Papers, vol LVII581, paper 300.

³⁷⁸ Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 300.

of scale, total tax revenue would increase in the long run. Gladstone was prepared to accept an initial loss of revenue for a longer-term positive outcome.

By selecting receipts as the first trial instrument, Gladstone believed that the penny tax system was suitable for numerous everyday transactions. For instruments that were not used as frequently as receipts, such as conveyances on sale of immovable properties and leases, changing to the penny tax system was not necessary. These instruments usually involved significantly higher transaction values with higher tax rates. Reducing the progressive stamp duty rates to the fixed rate penny tax system would lead to less tax revenue. Gladstone would not be able to make up the loss he forecasted with receipts. Also, in relation to instruments such as immovable property conveyance agreements, taxpayers were willing to pay stamp duty to gain the notarial protection of these documents. On the other hand, taxpayers did not need this kind of notarial protection for receipts related to small purchases of merchandise or services.

Gladstone expected no objection from the House of Commons and the public as the fixed rate for receipts was low and the adhesive stamp collection method was simple and convenient. Based on postage stamp revenue regaining its pre-reform level in seven years after Hill's reform in 1840,³⁷⁹ Gladstone estimated that the initial negative effect of £155,000 due to the new penny tax system would be recovered in the long run.

It turned out that Gladstone's financial estimation was far too conservative. No loss of revenue was recorded in the twelve months after the reform compared to the three yearly incomes before the reform. The revenue received after the reforms considerably exceeded previous records. The total revenue from stamp duty on receipts before the reform for the period of January 1852 to December 1852 was £194,088.³⁸⁰ After the reform, revenue received on penny stamps for

³⁷⁹ John Powell, *Great Events from History: The 19th Century*, 4 vols (New York, Salem Press 2006), vol 2, 643.

³⁸⁰ *House of Commons Parliamentary Papers* 6 April 1853, 'A Return of the Number of Stamps for Receipts, at each Rate, issued to the Public by the Office of Inland Revenue and its Distributors throughout the United Kingdom, for Three Years ended the 5 January 1853' series Accounts and Papers, vol LVII581, paper 300.

receipts for the period October 1853 to September 1854 was £259,670.³⁸¹ This showed that the penny tax reform was a huge financial success.

Summing up the penny tax reform in his speech to the House of Commons, Gladstone observed that before the reform, 'disobedience had become the rule and obedience the exception'. With the introduction of the new penny tax system, 'obedience is the rule, and disobedience is the exception'.³⁸²

When Governor MacDonnell introduced the stamp duty into Hong Kong, he chose impressing stamps, undertaken by officers in the Stamp Office, and adhesive stamps, as the two methods for stamp duty collection.³⁸³ He did not adopt stamped papers in Hong Kong but gave no explanation. To this extent, therefore, some, but not all, features of the British stamp duty collection method were endorsed in the Hong Kong Stamp Ordinance 1866.³⁸⁴ One reason could be that Hong Kong was a small colony in 1866 (consisting only of Hong Kong Island) with a much smaller and concentrated population as compared to Britain. It could be conjectured that it would not cause great inconvenience for Hong Kong taxpayers to bring their documents to the Stamp Office for stamping when the need arose. It was not necessary for the taxpayers to stock stamped papers. Another reason was Hong Kong lacked the resources to check the authenticity of stamped paper which would be used for important revenue-generating levies such as bills of exchange, leases or conveyances on sales and the like. The Hong Kong Stamp Office commenced operation in 1866 with a staff of five,³⁸⁵ and if stamped papers had been permitted, the policy might have invited unscrupulous taxpayers to counterfeit the stamped papers which, unchecked, might have weakened system sustainability.

The first Hong Kong stamp duty law stated the essence of the tax collection method but did not decree the actual implementation procedures. Nonetheless, the legislation gave the Hong Kong Governor a free hand in devising

³⁸¹ *House of Commons Parliamentary Debates* 6 March 1854, series 3, vol 131, col 363.

³⁸² *Ibid.*

³⁸³ Hong Kong Stamp Ordinance, No 12 of 1866, ss 8 & 9.

³⁸⁴ No 12 of 1866.

³⁸⁵ Extract from the Minutes of the Executive Council of Hong Kong (28 September 1867), CO129/125, 37. See also section 2.3.1.

procedures to collect stamp duty in Hong Kong.³⁸⁶ It has been discovered through research of colonial records that before the implementation of the Hong Kong Stamp Ordinance 1866,³⁸⁷ MacDonnell wrote to the Colonial Office seeking general advice on practical collection procedures from experienced British stamp duty officers.³⁸⁸

The Commissioners of the British Inland Revenue reviewed the 1866 Stamp Ordinance and replied with a report (5 December 1866 Stamp Duty Report) stating their views on the practical operation of the Hong Kong stamp duty implementation. The first piece of advice was that an office be set up in a convenient location for the public to send in their written instruments to be stamped and to distribute adhesive stamps.³⁸⁹ MacDonnell took this advice and decided the Stamp Office should be conveniently positioned within the Hong Kong Post Office building which was located at the heart of the City of Victoria.³⁹⁰

Second, since the Hong Kong Ordinance was based on the British Stamp Acts, the practical British regulations devised by the British Inland Revenue could be used for the implementation of the Hong Kong Ordinance in Hong Kong.³⁹¹ The British Inland Revenue supplied the Governor with forms used by the British Stamp Office and the office's internal control regulations for adoption in Hong Kong. There was no evidence to suggest that MacDonnell deviated from the British regulations and internal control practices.

The third, and most significant, recommendation related to the use of adhesive stamps.³⁹² The Commissioners of the British Inland Revenue advised MacDonnell that in Britain, adhesive stamps were allowed to be used only on agreements, bills of exchange (foreign), charter parties, drafts and receipts. The

³⁸⁶ Hong Kong Stamp Ordinance, No 12 of 1866, s 8.

³⁸⁷ No 12 of 1866.

³⁸⁸ Letter from Richard MacDonnell to Henry Herbert (10 September 1866), CO129/115, 40.

³⁸⁹ Letter from Commissioner of Inland Revenue of Britain to British Treasury (5 December 1866), CO129/118, 387–88.

³⁹⁰ The City of Victoria referred to the Central District on the Hong Kong Island today. See Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 17.

³⁹¹ Letter from Commissioner of Inland Revenue of Britain to British Treasury (5 December 1866), CO129/118, 387.

³⁹² Letter from Commissioner of Inland Revenue of Britain to British Treasury (5 December 1866), CO129/118, 388–89.

Commissioners objected strongly to the application of adhesive stamps to instruments generally, due to the insecurity of the revenue, a phrase now accepted to mean tax evasion. Accordingly, their use was confined to instruments of the nature described above and a few others that were liable to small rates of duty.³⁹³ In other words, the Commissioners explained what William Gladstone did not point out in his penny tax reform speech. Adhesive stamps should not be used on non-daily transactions with larger amounts of tax payable, as they would induce noncompliance. For example, if adhesive stamps could be used on leases that commanded higher tax payable, taxpayers might not attach the stamps on the leases in the first instance, as the related taxes were high. If there was no dispute till the end of the lease, the likelihood was that no stamp duty was discharged. In the case of dispute, the taxpayer could attach a stamp immediately and no penalty was involved.

A high-ranking official³⁹⁴ of the Colonial Office endorsed the 5 December 1866 Stamp Duty Report with one additional comment. He advised MacDonnell not to impose any unnecessary restriction that caused inconvenience to the Hong Kong public at the commencement of a new and unpopular system of tax.³⁹⁵ The British officials stressed the importance of striking a balance between the dichotomy of ‘insecurity of revenue’ and ‘taxpayer’s inconvenience’.

MacDonnell permitted the following instruments to be taxed according to the British penny tax principle: bills of exchange when drawn out of Hong Kong, powers of attorney, notes of protest, receipts, duplicates and counterparts of deeds, and instruments in writing under seal not otherwise charged with duty under the 1866 Stamp Ordinance drawn out of Hong Kong.³⁹⁶ Besides receipts and bills of exchange drawn out of Hong Kong, the rest of the instruments earmarked by MacDonnell for the penny stamp system in Hong Kong were not permitted in Britain. For these instruments, only impressed stamps applied at British Stamp Offices could be used. When queried by the British

³⁹³ Ibid.

³⁹⁴ The official scribbled on the letter from the British Treasury enclosing the report from the Commissioner of Inland Revenue of Britain. A simple signature was used to identify the writer of the remark. It was probable that the Under Secretary of State for the Colonies Lord Norton made the comment as the Treasury’s letter was addressed to him.

³⁹⁵ Letter from British Treasury to Colonial Office (12 December 1866), CO129/118, 383.

³⁹⁶ Orders Made by Governor Sir Richard Graves MacDonnell in Council under Authority of ‘Stamp Ordinance 1866’ (28 September 1867), CO129/125, 32.

Commissioners of Inland Revenue on the policy departing from the British government's practices,³⁹⁷ MacDonnell just said it was a matter of necessity without explaining.³⁹⁸ Analysing the evidence collected, it is possible that MacDonnell deviated from the British practice because he wished to secure more revenue through offering greater convenience to the public. It could also be the case that MacDonnell adhered to the advice of the aforementioned high-ranking Colonial Office official. Another possible explanation was that MacDonnell envisioned the new but understaffed Hong Kong Stamp Office might not be able to cope with the workload of impressing stamps on a large number of chargeable instruments.³⁹⁹

Nonetheless, two years later, MacDonnell acceded to the Commissioner's request to adhere to the British principle on instruments to which adhesive stamps were permitted to be affixed by issuing an executive order, thus forestalling the British Treasury from further pursuing the matter.⁴⁰⁰

The evidence affirms that the first Hong Kong stamp duty legislation had adopted all British stamp duty collection methods and principles prevailing in the nineteenth century (except for the use of stamp paper).

2.3.7 The prosecution protection mechanism and assessment appeal process safeguards deficiency

In a stamp duty system, it is essential to have prosecution protection mechanism as well as the assessment appeal process safeguards, to prevent the tax authority from abusing its power. This would prevent taxpayer discontent, which might have threatened the social order or led to widespread tax evasion. Moreover, governments would benefit from well-developed mechanisms and safeguards as tax compliance was best achieved by providing taxpayers with a tax system that ensured they were taxed precisely and

³⁹⁷ Letter from Commissioner of Inland Revenue of Britain to British Treasury (28 February 1868), CO129/135, 327–28.

³⁹⁸ Letter from Richard MacDonnell to Richard Grenville (14 May 1868), CO129/130, 346–47.

³⁹⁹ Extract from the Minutes of the Executive Council of Hong Kong (28 September 1867), CO129/125, 37. See also section 2.3.6.

⁴⁰⁰ Letter from Commissioner of Inland Revenue of Britain to British Treasury (27 August 1868), CO129/135, 418.

according to the law.⁴⁰¹ To put it simply, prosecution protection mechanisms refer to the system in place to prevent unjust prosecution as well as to offer the right to appeal against conviction. Stamp duty assessment appeal process safeguards refer to the granting of rights to aggrieved taxpayers to appeal to the regular courts,⁴⁰² or to an adjudicating body within the tax process itself,⁴⁰³ against the assessments issued by the tax authority.

This subsection investigates the British stamp duty prosecution protection mechanisms as well as appeal process safeguards that were already in operation when Hong Kong introduced stamp duty to ascertain whether Hong Kong adopted the established British processes in 1866. The extent to which the 1866 Hong Kong Ordinance embraced and implemented the British processes, their effectiveness and adequacy, forms the basis of this subsection.

British protection mechanisms for unjust prosecution

The first general British Stamp Act promulgated in 1694⁴⁰⁴ reveals that the legislators had already stipulated elementary protection mechanisms to ensure stamp duty payers were not unjustly prosecuted in the seventeenth century. The 1694 Act provided that no person should be arrested for stamp duty offences 'without any writ or legal process to justify the same'.⁴⁰⁵

Evaluating the legislative advancement before 1866,⁴⁰⁶ it is discovered that the next major enactment, which specified a judicial appeal channel against convictions, was promulgated in 1765. The Stamp Act 1765⁴⁰⁷ stated that taxpayers aggrieved by the judgments or convictions issued by a Justice, or Justices, of the Peace⁴⁰⁸ might appeal to the Quarter Sessions.⁴⁰⁹ In the event that the taxpayers found the judgments of the Quarter Sessions improper, they might appeal to the Barons of the Court of Exchequer.⁴¹⁰

⁴⁰¹ Chantal Stebbings, *The Victorian Taxpayer and the Law: A Study in Constitutional Conflict* (Cambridge University Press 2009), 3.

⁴⁰² Ibid 30–44.

⁴⁰³ Ibid 20–30.

⁴⁰⁴ British Stamp Act 1694 (5 & 6 Wm & Mar c 21).

⁴⁰⁵ Ibid s 4.

⁴⁰⁶ The year which Hong Kong introduced stamp duty.

⁴⁰⁷ 5 Geo 3 c 46.

⁴⁰⁸ British Stamp Act 1765 (5 Geo 3 c 46), s 23.

⁴⁰⁹ Ibid s 25.

⁴¹⁰ Ibid s 36.

British appeal process safeguards against Stamp Office's assessment

Adjudication by government officers in charge of tax administration was an integral part of the administration of certain forms of taxation such as the excise, in nineteenth century Britain.⁴¹¹ The British government introduced bureaucratic adjudication of stamp duty for written instruments via the British Stamp Act 1850.⁴¹² The British government recognised that there were frequent doubts by the taxpayers as to whether stamp duties were chargeable on such written documents and it was expedient that such doubts should be removed. It was stipulated that the taxpayers would pay a fee of 10s to obtain the Commissioner of Inland Revenue's adjudication.⁴¹³

The merit of such adjudication was the high quality of judgments made by officers who were technically competent in assessing tax liabilities. On the other hand, the perceived weakness of bureaucratic adjudication was the clear conflict of interest between taxpayers and adjudicators.⁴¹⁴ The adjudicators, being executive members of the tax departments, were in effect judging their own causes.

Examination of the British Stamp Acts reveals that it was not until the year 1870, that the stamp duty lawmakers specified clearly in the Stamp Act 1870, that taxpayers who were dissatisfied with the assessments of the Commissioners might appeal against such assessments to the Court of Exchequer.⁴¹⁵ Such law was not apparent before 1870. As such, it was unlikely that taxpayers had the right to appeal against the Stamp Office's assessments to regular courts before 1870. Further evidence to justify the rhetoric is found via examining the stamp duty case law before the mid-eighteenth century. A survey of the English stamp duty cases in a British stamp duty textbook written for tax practitioners in 1841 demonstrates that all cited cases, which shaped

⁴¹¹ Chantal Stebbings, *The Victorian Taxpayer and the Law: A Study in Constitutional Conflict* (Cambridge University Press 2009), 106.

⁴¹² 13 & 14 Vict c 97, s 14. See also Barry Pinson, *Pinson on Revenue Law: Comprising Income Tax, Capital Gains Tax, Corporation Tax, Capital Transfer Tax, Stamp Duties, Tax Planning* (London, Sweet & Maxwell 1975), 561.

⁴¹³ British Stamp Act 1850 (13 & 14 Vict c 97), s 14.

⁴¹⁴ See generally Chantal Stebbings, *The Victorian Taxpayer and the Law: A Study in Constitutional Conflict* (Cambridge University Press 2009), 108–109.

⁴¹⁵ British Stamp Act 1870 (33 & 34 Vict c 97), s 19.

and exemplified the British stamp duty system, were civil cases between parties to certain instruments.⁴¹⁶

Hong Kong's position in 1866

In the Hong Kong context, the Stamp Ordinance 1866 provided that offences pertaining to stamp duty would be summarily tried by the Police Magistrate.⁴¹⁷ In Hong Kong, the post of Chief Magistrate was created in 1841 and the only appointee was also the Chief of Police and the Goal.⁴¹⁸ In 1843, a Chief Magistrate and an Assistant Magistrate were appointed.⁴¹⁹ In 1862 (four years before the introduction of stamp duty in Hong Kong), a revised structure was established with two Police Magistrates of equal grade.⁴²⁰ Until the late 1870s, the Magistrates under the Magistracy system had no formal legal training. They were British⁴²¹ and usually military men who were advocates of flogging and prided themselves more on their expertise in handling the Chinese than on their legal knowledge.⁴²² Furthermore, the Magistrates often ignored the presumption of innocence and placed the burden of proof on the accused.⁴²³ One Hong Kong Magistrate, Charles Hillier, remarked in 1856: 'my duty is to take down positive and relevant evidence in support of the charge' and he thought it was not necessary to take evidence in favour of the accused.⁴²⁴

The Hong Kong Magistracy in the nineteenth century was not part of the Hong Kong judicial system, but a department of the government to administer law and order and to hear offences arising from Ordinances passed by the Hong Kong

⁴¹⁶ J Chitty and John Walter Hulmes, *A Practical Treatise on the Stamp Laws with an Appendix of the Statutes, and Notes thereon* (London, Saunders and Benning Law Booksellers 1841).

⁴¹⁷ Hong Kong Stamp Ordinance, No 12 of 1866, s 30.

⁴¹⁸ Kyshe Norton, *The History of the Laws and Courts of Hong Kong* (first published 1898, Hong Kong, Vetch and Lee 1971), vol 1, 6.

⁴¹⁹ *Ibid* 24.

⁴²⁰ Gillian Bickley, *A Magistrate's Court in 19th Century Hong Kong: Court in Time* (Hong Kong, Proverse Hong Kong 2005), 35.

⁴²¹ Christopher Munn, 'The Rule of Law and Criminal Justice in the Nineteenth Century' in Steve Tsang (ed), *Judicial Independence and the Rule of Law in Hong Kong* (Hong Kong, Hong Kong University Press 2001).

⁴²² With this attitude, the sentences for the same crime were clearly divided into Chinese and non-Chinese with the Chinese's sentences more severe. Equality of race across ethnic lines was not always upheld in the Hong Kong Police Magistracy in the nineteenth century.

⁴²³ Christopher Munn, 'The Rule of Law and Criminal Justice in the Nineteenth Century' in Steve Tsang (ed), *Judicial Independence and the Rule of Law in Hong Kong* (Hong Kong, Hong Kong University Press 2001), 30.

⁴²⁴ Kyshe Norton, *The History of the Laws and Courts of Hong Kong* (first published 1898, Hong Kong, Vetch and Lee 1971), vol 1, 378.

Legislative Council.⁴²⁵ The Police Magistrates were accordingly officers of the Hong Kong government and under the authority of the colonial government.⁴²⁶ Under such a system, the officers of the executive in effect were judging their own cause. Further, the Hong Kong Magistracy system did not assist in ensuring the taxpayers were taxed accurately and according to the stamp duty legislation. It was not a system which promoted any constructive dialogue between collectors and taxpayers who felt they were being wrongly taxed. Instead, it was used to punish those who were perceived to have evaded tax.

However, the 1866 Stamp Ordinance included a legal protection to shield taxpayers from being prosecuted unfairly by the Magistracy. It stipulated that prosecution for any offence under the 1866 Stamp Ordinance should only be processed with the prior consent of the Hong Kong Attorney General.⁴²⁷ Unlike the Police Magistrates, the Hong Kong Attorneys General in the nineteenth century were professional lawyers who had distinguished legal careers before being appointed. A few of them became the Chief Justice of Hong Kong.⁴²⁸ They were more competent than a Hong Kong Magistrate to gauge whether a taxpayer had complied with the stamp duty legislation. This stamp duty law was unusual as the Attorney General's prior approval was not required for summary proceedings brought to the Magistracy in other spheres. For example, there was no similar provision to initiate summary proceedings of a Chinese for not carrying a lantern or lighted lamp and going about the City of Victoria⁴²⁹ after dark under the law passed during the same era as the 1866 Stamp Duty Ordinance. The person who violated the law would be sent directly to the Police Magistrate by the police officer for trial without the Attorney General's prior consent to prosecution.⁴³⁰ This protection mechanism was, therefore, particular

⁴²⁵ Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 49–51.

⁴²⁶ Christopher Munn, 'The Rule of Law and Criminal Justice in the Nineteenth Century' in Steve Tsang (ed), *Judicial Independence and the Rule of Law in Hong Kong* (Hong Kong, Hong Kong University Press 2001), 29.

⁴²⁷ Hong Kong Stamp Ordinance, No 12 of 1866, s 29.

⁴²⁸ Kyshe Norton, *The History of the Laws and Courts of Hong Kong* (first published 1898, Hong Kong, Vetch and Lee 1971), vol 1, XX1. See generally the career summaries and legal qualifications of the Hong Kong Attorney Generals in the nineteenth century presented in vol 1 and vol 2 of the monograph.

⁴²⁹ The City of Victoria referred to the Central District on the Hong Kong Island today. See Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 17.

⁴³⁰ An Ordinance to amend and consolidate the Law in relation to the Issue of Passes for Chinese, and to provide for the better Security of the Residents of the Colony, Ordinance No 14 of 1870), ss 17–22.

to the stamp duty law and was incorporated into the legislation because passing judgment on revenue law matters required more than mere common sense and local knowledge. The legislator considered that the legal expertise of the Attorney General was necessary.

By way of contrast, the Hong Kong legislation introduced the British stamp duty mechanism of subjecting stamp duty offenders to summary trials. Following the British tradition, Hong Kong also introduced protection mechanisms to prevent unfair prosecutions in the first instance. Nonetheless, the juxtaposition of the parent with the host systems identified two marked differences. First, in Britain, the trials were conducted by an independent⁴³¹ Justice of the Peace, whereas in Hong Kong they were heard by non-independent Police Magistrates. Second, unlike the British legislation, the Hong Kong law did not specify any further appeal mechanism if the taxpayers were aggrieved by the judgments of the Police Magistrates. The evidence shows that protection against unjust prosecutions provided in Hong Kong under its 1866 stamp legislation were inadequate. Thus, the essential protection implemented in Britain at the same time that the first Hong Kong Stamp Ordinance was introduced, was not adopted comprehensively in Hong Kong.

As revealed above, before 1866, the British stamp legislation did not specify any rule that general taxpayers could follow to appeal against assessments issued by the Stamp Commissioners, either to a Justice of the Peace or other British Courts. Essentially, the British appeal system was only appropriate for those taxpayers who were accused by the stamp duty authorities of having committed stamp duty offences under the Stamp Acts. The next fundamental question is whether, in 1866, the Hong Kong taxpayers were in a similar position. Examining the first Hong Kong Stamp Ordinance,⁴³² it is suggested that Hong Kong taxpayers could not appeal to Police Magistrates if they had disputes with the Stamp Office as the law lacked the relevant provisions. In any instance, it was unlikely that the taxpayers could appeal to the Police

⁴³¹ Chantal Stebbings, *The Victorian Taxpayer and the Law: A Study in Constitutional Conflict* (Cambridge University Press 2009), 23.

⁴³² No 12 of 1866.

Magistrates since the Magistracy was set up to hear offences committed and impose punishments, but not to hear civil disputes.⁴³³

Investigating further, it was discovered that, unlike the legislation for Hong Kong house rates, which specified that taxpayers could petition the Hong Kong Supreme Court for a refund of house rates,⁴³⁴ the 1866 Stamp Ordinance did not specify any such appeal path for stamp duty. Although the 1866 Hong Kong Stamp Ordinance did not expressly prohibit taxpayers from appealing to the Supreme Court, there is no evidence that any such appeals were made within ten years following the introduction of stamp duty assessment.⁴³⁵ It is suggested that the reason for this was that it was not always practical for the taxpayers to appeal to the Supreme Court on stamp duty matters. First, the cost of appeal⁴³⁶ could far exceed the duty payable since the maximum stated duty chargeable under the Hong Kong Stamp Ordinance 1866 was HK\$25.⁴³⁷ Second, it was not certain that the Supreme Court would accept stamp duty cases initiated by taxpayers due to the small amount of tax in dispute. Drawing parallels with the Hong Kong Rating Ordinance in the 1860s supports this assumption. The Rating Ordinance in 1867 stipulated that the Judge of the Court would not

⁴³³ Before the opening of the Hong Kong Supreme Court on 1 October 1844, the Magistrates heard all civil and criminal cases. After the establishment of the Supreme Court, the Magistrates only heard criminal cases. The Supreme Court was established to consider the dissatisfaction of British inhabitants in Hong Kong with the judgments of early colonial magistrates, as decisions in many civil disputes required legal knowledge rather than just common sense. At that time, the majority of the inhabitants preferred to forego their legal claims rather than request a decision from the Magistrates, who were totally unacquainted with the law. The Supreme Court assumed its unlimited civil and criminal jurisdiction in Hong Kong with trained legal personnel. See Kyshe Norton, *The History of the Laws and Courts of Hong Kong* (first published 1898, Hong Kong, Vetch and Lee 1971), vol 1, 39 & 64. Due to the immense workload of the Supreme Court, the government established a Court of Summary Jurisdiction of Hong Kong under the Supreme Court in 1862 to deal with small claims. The Court of Summary Jurisdiction of Hong Kong was temporary in nature and lasted for some ten years when the Supreme Court resumed its jurisdiction in summary cases. See Valerie Penllington, *Law in Hong Kong* (Hong Kong, South China Morning Post Publication 1978), 47–48.

⁴³⁴ An Ordinance to raise an assessed Rate on Lands, Houses, and Premises, within the Colony of Hong Kong, for the Upholding of the requisite Police Force therein, Ordinance No 2 of 1845, s 9; An Ordinance for the better assessing and collecting the Police and Lighting Rates within the Colony of Hong Kong, Ordinance No 5 of 1863, s 11; An Ordinance to amend “The Police and Lighting Rate Ordinance, 1863”, Ordinance No 11 of 1867, s 5.

⁴³⁵ In the nineteenth century, newspapers were the only reporting method for Hong Kong court cases as the colony lacked official law reports at that time. An examination of newspaper coverage (provided by *Hong Kong Daily Press* as well as *China Mail*) for the ten years after the promulgation of the first Hong Kong Stamp Ordinance does not reveal any stamp duty appeals to the Supreme Court.

⁴³⁶ For example see Kyshe Norton, *The History of the Laws and Courts of Hong Kong* (first published 1898, Hong Kong, Vetch and Lee 1971), vol 2, 78 which indicated that taking cases to the Hong Kong Supreme Court in 1865 entailed considerable expense.

⁴³⁷ Hong Kong Stamp Ordinance, No 12 of 1866, sch.

entertain any claims from taxpayers for over-assessed house rates that were below HK\$500.⁴³⁸ With the threshold of HK\$500 stated in the only other form of revenue law at that time, it could be inferred that an appeal to the Supreme Court for stamp duty disputes by taxpayers was not feasible.

Regulations for appeals from the decisions of the Supreme Court to the British Privy Council in London were published in Hong Kong on 5 May 1846.⁴³⁹ Appealing to the Privy Council was unthinkable as it was expressly provided that the Privy Council would only entertain appeals that involved a claim that was more than HK\$5,000.⁴⁴⁰ It was unlikely that stamp duty disputes would exceed that sum in the 1860s.

The evidence demonstrates that in 1866, the Hong Kong position on the right to appeal to any court against a stamp duty assessment was similar to the prevailing practice in Britain. It was not possible or feasible to appeal at all in Hong Kong.

The British tradition of adjudication by the executive was adopted in Hong Kong by the Hong Kong Stamp Ordinance 1866.⁴⁴¹ It specified that any person who was in doubt as to the proper amount of stamp duty payable on an instrument could apply to the Collector of Stamp Revenue for adjudication for a fee of HK\$10.

It is submitted that the Hong Kong stamp duty adjudication system in its initial form was not effective for three reasons. First, the technical merits of the determinations issued were untenable. The first Hong Kong Collector of Stamp Duty, Mr F W Mitchell had another major full-time employment as the Post Master General of Hong Kong and could not devote all his time to the Stamp Office. Furthermore, there was no evidence he had expertise in the British-based stamp duty law to make quality decisions on stamp duty legal matters.

⁴³⁸ An Ordinance to amend 'The Police and Lighting Rate Ordinance, 1863', Ordinance No 11 of 1867), s 6.

⁴³⁹ Kyshe Norton, *The History of the Laws and Courts of Hong Kong* (first published 1898, Hong Kong, Vetch and Lee 1971), vol 1, 95. The British Privy Council remained the highest appellate court of last resort in Hong Kong's judicial system till the ceding of sovereignty in 1997.

⁴⁴⁰ Hong Kong Government, 'Rules for Appeals to the Privy Council' (Hong Kong, Hong Kong Government Printer, 1846), Rule 2.

⁴⁴¹ Hong Kong Stamp Ordinance, No 12 of 1866, s 20.

The Governor of Hong Kong Sir Richard MacDonnell remarked: 'I have after much consideration appointed Mr Mitchell to be the Stamp Collector provisionally, as he has more facilities for discharging duties as such than any other head of a department more remote from the new office'.⁴⁴² Mr Mitchell was appointed because the Stamp Office was situated within the Hong Kong Post Office building and he was in close proximity to oversee the operation. The other two key officers were the First Clerk and Second Clerk of the Hong Kong Stamp Office. MacDonnell commented that the First Clerk, Mr S Rodrigues, was appointed 'due solely to his familiarity with legal documents and instruments'.⁴⁴³ The reason for hiring the Second Clerk, Mr F Biden, was because 'he was a respectable person here and had some slight previous acquaintance with doctrine of the Stamp Office duties in London'.⁴⁴⁴ With the composition of novice staff, the quality of adjudication was unconvincing. Second, the cost of seeking adjudication was HK\$10, which was significant as compared to the stamp duty, which ranged from HK3¢ to a maximum of HK\$25, payable on each taxable transaction in the 1860s. Taxpayers were better off paying the stamp duties than paying a substantial sum to access the safeguard. Third, the inherent conflict of interest in tax collectors acting as adjudicators further undermined the acceptability of the early Hong Kong stamp duty adjudication system.

Apart from the prosecution protection mechanism and appeal process safeguards that Hong Kong had adopted partially from its British parent, there were two other types of safeguards in place to ensure the Chinese community was taxed according to the law. They were the Chinese *Hong Kong Government Gazette* and the Hong Kong Tung Wah Hospital.

The tradition of the *London Gazette* was established in 1665.⁴⁴⁵ The Hong Kong government ensured all stamp duty legislation was published in the *Hong Kong Government Gazette*. This helped the taxpayers to understand their exact stamp duty obligations in their interaction with the Hong Kong Stamp Office. To ensure the majority Chinese population was informed of government policies,

⁴⁴² Letter from Richard MacDonnell to Richard Grenville (23 September 1867), CO129/124, 386.

⁴⁴³ Ibid 388.

⁴⁴⁴ Ibid.

⁴⁴⁵ *The Gazette*, 'A History of The Gazette' <<https://www.thegazette.co.uk/history>> accessed 16 October 2015.

Governor Sir Hercules Robinson (the predecessor of Governor Sir Richard MacDonnell) decreed that more Chinese editions of the *Gazettes*⁴⁴⁶ be produced.⁴⁴⁷ The Chinese *Gazettes* enhanced local understanding of the British colonial law and policies.⁴⁴⁸

Though the stamp duty law was published, it was technical and complex for many taxpayers to understand their precise obligations and to safeguard their rights. There was a demand for independent advice and assistance on stamp duty issues. Surveying the available options available in the 1860s, it is seen that they were very limited. Wealthier taxpayers could obtain legal opinions from the twenty or so British solicitors⁴⁴⁹ practising in Hong Kong in the 1860s if they deemed it necessary. For the majority of the Chinese community, there was an alternative advisory channel in the form of Hong Kong Chinese organisations, which acted as the de facto government for the Chinese and were sanctioned by the British colonial government. The earliest such organisation was Man Mo Temple,⁴⁵⁰ founded by some Chinese community leaders in 1847. Although its ostensible purpose was to worship the literature god and the martial god, the temple evolved to serve as the local de facto governing board among the Chinese. The temple attended to social affairs of the Chinese community and acted as commercial arbitrators for the Chinese.⁴⁵¹ The establishment of the Hong Kong Tung Wah Hospital by the Hong Kong government in 1872 largely replaced the role of Man Mo Temple. Prominent Chinese residents were elected by the government on an annual basis to become directors of the hospital

⁴⁴⁶ The *Hong Kong Government Gazette* first appeared in 1841. In the beginning, it was a supplement to the Canton Press, and was successively printed in newspapers such as *Friends of China*, *Hong Kong Register* and *China Mail*. In 1853, the *Gazette* became a separate publication. Early versions of the *Gazette* were printed in English only. The first Chinese language *Gazette* was published on 11 February 1854. These were printed on a selective basis as not all English *Gazettes* would have Chinese translations. Gradually, for issues relating to the Chinese people, most of them would have Chinese translations. In January 1879, the bilingual edition was introduced. See, Hong Kong Public Records Office, 'The Hong Kong Government Gazette' <www.grs.gov.hk/ws/erp/en/highlights/gazette.html> accessed 11 September 2014.

⁴⁴⁷ G B Endacott, *A Biographical Sketch-Book of Early Hong Kong* (Singapore, Eastern Universities Press 1962), 47.

⁴⁴⁸ Ibid.

⁴⁴⁹ Kyshe Norton, *The History of the Laws and Courts of Hong Kong* (first published 1898, Hong Kong, Vetch and Lee 1971), vol 1, XIX–XXII. A list of the solicitors practising in Hong Kong in the 1860s is presented.

⁴⁵⁰ Antiques and Monuments Office Leisure and Cultural Service Department, 'Man Mo Temple Compound' <www.lcsd.gov.hk/ce/Museum/Monument/en/monuments_96.php> accessed 10 May 2016.

⁴⁵¹ John M Carroll, *A Concise History of Hong Kong* (Hong Kong, Hong Kong University Press 2007), 39–40.

board, as a form of government recognition of notable and distinguished Chinese residents. These hospital directors were highly regarded by the Hong Kong Chinese,⁴⁵² and the hospital also functioned as an informal governing body for the Chinese. To avoid unfamiliar British law and the complexities of the English language, many Chinese preferred to resolve their civil arguments through the prestigious board. Judgments passed by directors of the Tung Wah Hospital were morally binding among the Chinese. The hospital also provided an advisory service on ways to comply with Ordinances passed by the British colonial government.⁴⁵³

The inadequacy of the Hong Kong stamp duty prosecution protection mechanism and appeal process safeguards in 1866

Based on the available evidence, there were no satisfactory protection mechanisms against unfair prosecutions or appeal process safeguards for stamp duty taxpayers under the Hong Kong Stamp Ordinance 1866.⁴⁵⁴ MacDonnell might have felt it was not necessary as stamp duty was viewed as the simplest form of tax in operation in Britain.⁴⁵⁵ Taxpayers purchased stamps needed for their document or had documents impressed with a stamp at the Stamp Office and such operation was not complicated. Further, MacDonnell might have perceived that the dutiable documents in Hong Kong were not extensive and tax rates were low as compared to other British colonies and Britain. As such, no significant dispute would be anticipated. Accordingly, he might have regarded the demand for an elaborate protection as well as safeguard system was not strong, which led to the absence of such regulations in Hong Kong's first Stamp Duty Ordinance.⁴⁵⁶

Apparently, there was also no clamour against the lack of prosecution protection mechanisms or appeal process safeguards for taxpayers in the Hong Kong Stamp Ordinance 1866. Examination of the historical social and political

⁴⁵² Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 68.

⁴⁵³ Ibid 69.

⁴⁵⁴ No 12 of 1866.

⁴⁵⁵ Chantal Stebbings, *The Victorian Taxpayer and the Law: A Study in Constitutional Conflict* (Cambridge University Press 2009), 83–84.

⁴⁵⁶ Hong Kong Stamp Ordinance, No 12 of 1866.

circumstances points to two reasons behind the absence of demand in Hong Kong.

The first reason related to the Chinese population's lack of knowledge of the British legal system as well as its intrinsic moral principles. Governor Sir Hercules Robinson (in office 1859–1865) estimated that out of the 120,000 Chinese living in Hong Kong in the 1860s, fewer than five hundred were familiar with British laws and legal institutions.⁴⁵⁷ The majority of the Chinese people were living according to the values of the Qing Dynasty legal system and were not aware of the British legal system, of which judicial independence was the keystone. Besides hearing civil disputes and criminal cases, a Qing Magistrate was also an originator of law, an administrator of law, a prosecutor, a police chief and a coroner.⁴⁵⁸ From a tax perspective, the Qing Magistrate concurrently held the appointments of the Governor of Hong Kong, the Collector of Stamp Duty, the Chief Justice of the Hong Kong Supreme Court and the Hong Kong Government Prosecutor. There was an aggregation of powers rather than separation of powers. The perceived benefit of such a system was the ability to lower the number of officers in the government and thus lower taxes. Nevertheless, under such a system, it was quite pointless for taxpayers to launch appeals against tax assessments issued by the government or to dispute prosecutions initiated by the Qing Magistrate. The Qing legal and governing system was part of life for the Chinese in the nineteenth century. Furthermore, the nineteenth century Chinese legal system was shaped by Chinese Confucian ideologies. The Chinese believed that litigation and court disputes were engaged in by contentious and immoral people and that morally superior people would not litigate. In other words, the act of engaging in a lawsuit indicated moral failure.⁴⁵⁹ Qing scholar and prominent Mandarin Yuqian⁴⁶⁰ remarked that people living according to high moral principles emphasised humaneness, righteousness, politeness, wisdom and sincerity.

⁴⁵⁷ G B Endacott, *A Biographical Sketch-Book of Early Hong Kong* (Singapore, Eastern Universities Press 1962), 47.

⁴⁵⁸ Weifang He, 'The Judicial System and Governance in Traditional China' in *The Rule of Law Perspectives from the Pacific Rim* (New York, Mansfield Centre for Pacific Affairs 2000), 93.

⁴⁵⁹ Philip C C Huang, *Civil Justice in China: Representation and Practice in the Qing* (California, Stanford University Press 1996), 200.

⁴⁶⁰ Yuqian was a prominent Mandarin who rose from the rank of County Magistrate to Minister-grade official in the late Qing court. He had strong views against the opium importation by British merchants into China in the nineteenth century. He committed suicide in 1841 after the British forces defeated his armies during the First Opium War.

People who liked to litigate were mean-spirited, lacked balance, were contentious out of anger, and were therefore not humane, righteous, polite, wise or sincere.⁴⁶¹ As a Chinese gentleman, one had to avoid lawsuits at all cost. With such traditional Chinese values, and ignorant of British legal concepts of judicial independence, the Hong Kong Chinese did not censure the lack of safeguards under the Hong Kong Stamp Ordinance 1866.⁴⁶²

The second reason was related to the first. Without support from the majority Chinese community, it was impossible for the minority Hong Kong British population to stage a formidable revolt against the lack of comprehensive protections and safeguards similar to the American stamp duty revolt in 1765.⁴⁶³

As Hong Kong progressed, it can be surmised that the Hong Kong stamp duty system in its primitive form could not defend the rights of the taxpayers. The 1866 Hong Kong stamp duty system could not deal with the growing demand by taxpayers for mechanisms to ensure that they were being taxed strictly in accordance with the law, and this would be compounded in future by the effects of economic growth and the introduction of higher tax rates.⁴⁶⁴

2.3.8 Introduction of rules to counter stamp duty noncompliance

In the pre-legislative debate on the first Hong Kong Stamp Ordinance,⁴⁶⁵ the Legislative Council unofficial members envisioned noncompliance would be a problem, as the stamp duty collectors would not comprehend Chinese documents, thus enabling the Chinese community easily to escape paying tax.⁴⁶⁶ In his communication with the Colonial Office regarding the implementation of the Hong Kong Stamp Ordinance 1866,⁴⁶⁷ MacDonnell mentioned that his government would 'nevertheless require much vigilance to prevent some of its provisions being evaded.'⁴⁶⁸ The Commissioners of Inland

⁴⁶¹ Philip C C Huang, *Civil Justice in China: Representation and Practice in the Qing* (California, Stanford University Press 1996), 201.

⁴⁶² No 12 of 1866.

⁴⁶³ See below section 2.4.1.

⁴⁶⁴ The methods adopted by the Hong Kong government to improve the protections and safeguards will be discussed in Chapter 4, which investigates the provisions introduced by the Hong Kong government in the post-1866 stamp duty era in order to maintain system sustainability. See section 4.2.5. For definition of sustainability, see section 4.2.

⁴⁶⁵ Hong Kong Stamp Ordinance, No 12 of 1866.

⁴⁶⁶ See section 2.1.1.

⁴⁶⁷ No 12 of 1866.

⁴⁶⁸ Letter from Richard MacDonnell to Richard Grenville (14 October 1867), CO129/125, 28.

Revenue reviewing the 1866 Hong Kong stamp legislation remarked that MacDonnell might have lost sight of the possible loss of revenue due to noncompliance with the extensive use of adhesive stamps on a wide variety of instruments. The evidence demonstrates that the parties to the institution of Hong Kong stamp duty envisioned noncompliance would be a key implementation issue that could not be neglected in the initial years following the introduction of stamp duty.

In this study, noncompliance encompasses the act of not paying stamp duty when dutiable instruments were executed, evading stamp duty as well as avoiding stamp duty. For the purposes of this study, stamp duty evasion is defined as the illegal circumvention of duties by deliberately misrepresenting the true state of the dutiable transactions to the Collector of Stamp Duty or else escaping the payment of duties by other illegal means. Meanwhile, stamp duty avoidance is defined as the legal use of the stamp duty law to reduce the tax burden.

It has been seen that a number of measures were imported into the Hong Kong stamp duty from the British parent tax, such as techniques to compute, methods to collect, prosecution protection mechanisms and the assessment appeal process safeguards. It will now be seen to what extent measures taken to combat stamp duty noncompliance during the formative years of the Hong Kong stamp duty law had British origins.

Initial provisions to ensure voluntary and full payment

It was stipulated in the British Stamp Act 1694 that when a taxable written instrument was unstamped or insufficiently stamped, the document would not be admitted in court and would remain useless in this sense till a penalty of £5 had been paid.⁴⁶⁹ This shows, first, that the tax was notarial in nature as the application of a government seal added credibility and validity to the documents. So, for example, physicians or attorneys would ensure their professional admission documents were properly stamped when showing their qualifications to the public.⁴⁷⁰ The public might view certificates without proper

⁴⁶⁹ British Stamp Act 1694 (5 & 6 Wm & Mar c 21), s 11.

⁴⁷⁰ Ibid s 3.

stamp marks as counterfeits. This notary function was a practical deterrence against not paying the tax. Second, since unstamped documents were inadmissible for court rulings, it would be in the parties' best interests to ensure the documents were stamped to guarantee validity. Third, the penalty of £5 for noncompliance was a large sum when compared to the usual duties payable, thus encouraging self-compliance rather than being charged a much larger penalty later. In other words, the stamp duty law was designed to levy heavy penalties on relatively small amounts of stamp duties payable so as to encourage voluntary compliance by taxpayers. These same fundamental principles were maintained in subsequent stamp Acts, notably the British Stamp Act 1815,⁴⁷¹ which Stephen Dowell termed a 'final consolidation' for the period 1694 to 1815.⁴⁷²

The 1866 Hong Kong Stamp Ordinance⁴⁷³ was drafted in such a way as to combat stamp duty noncompliance in two ways. The first was accomplished by not recognising unstamped documents. This was achieved by rendering unstamped documents inadmissible in courts⁴⁷⁴ or by ordering public officers not to act upon unstamped documents.⁴⁷⁵ The second was accomplished by imposing heavy penalties for noncompliance. Penalties for non-stamping would be double the original amounts of stamp duty payable if the unstamped documents were brought to be stamped within six weeks of execution.⁴⁷⁶ Penalties would be tripled if the unstamped documents were brought to be stamped after six weeks of execution.⁴⁷⁷ The penalty would be increased to twenty times the original stamp duty if the unstamped or insufficiently stamped documents were brought to the Stamp Office four months or more after execution.⁴⁷⁸ The evidence demonstrates that Hong Kong adhered completely to the British traditions begun in 1694 with no material alteration.

⁴⁷¹ 44 Geo 3 c 184.

⁴⁷² Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 296.

⁴⁷³ No 12 of 1866.

⁴⁷⁴ Hong Kong Stamp Ordinance, No 12 of 1866, s 15.

⁴⁷⁵ *Ibid.*

⁴⁷⁶ *Ibid* s 16.

⁴⁷⁷ *Ibid.*

⁴⁷⁸ *Ibid.*

In addition to adopting British tenets in ensuring voluntary and full payment, MacDonnell included a mechanism that was not apparent in the British Stamp Acts for written instruments to detect noncompliance with the aim of improving voluntary stamp duty payment. The 1866 Hong Kong stamp legislation stipulated that the Stamp Office would award the whole or part of the fine gained by the Hong Kong government to informers of incidences of documents being executed but not stamped.⁴⁷⁹ This was an extra detection channel made available to identify taxable written instruments that had been executed but not duly stamped besides relying on courts or public officers. MacDonnell gave no explanation for conceiving the law, in either the Legislative Council addresses or in his correspondence with the Colonial Office. As an educated conjecture, the rule might have its origin in British Stamp Acts for objects. As clear evidence, it was the first method of enforcement for the medicine stamp duty in the late eighteenth century in Britain.⁴⁸⁰

Taking the initial Hong Kong law on inducing voluntary compliance at face value, it is submitted that the British principles adopted might be cost effective as well as effectual in achieving the pre-determined objective. Nevertheless, analysing the peculiar Hong Kong circumstances in the late nineteenth century, there might be doubt whether the Chinese population would comply as they might not rely upon the protection of the Hong Kong British judges in commercial disputes.⁴⁸¹ This might have dampened their desire to comply. As evidence in support of this, a Hong Kong historian observed that with the exception of receipts given to foreigners, Chinese tradesmen and merchants disregarded the Hong Kong stamp duty legislation in 1867.⁴⁸²

In addition, evaluating the effectiveness of the initial provisions in encouraging the voluntary payment of stamp duty, gives rise to two observations regarding the drafting of the initial Hong Kong law that might have impinged on voluntary compliance. First, it was stipulated that all instruments had to be stamped

⁴⁷⁹ Ibid s 30.

⁴⁸⁰ British Medicine Stamp Act 1785 (25 Geo 3 c 79), s 13. For the history of the British medicine stamp duties, see Chantal Stebbings, 'Tax and Quacks: The Policy of the Eighteenth-Century Medicine Stamp Duty' in John Tiley (ed), *Studies in the History of Tax Law vol 6* (North America, Hart Publishing 2013), c 8.

⁴⁸¹ See section 2.3.7, 109–11.

⁴⁸² E J Eitel, *Europe in China* (first published 1895, Hong Kong, Oxford University Press 1983), 427.

before execution.⁴⁸³ The strict requirement for stamping documents before execution caused significant inconvenience to taxpayers, and in consequence led to a degree of disobedience. Second, the provisions which levied heavy penalties were complicated by a section which used HK\$50 dollars as a reference point to prescribe the applicable penalties. Basically, it provided that penalties should not exceed HK\$50, or a sum equal to ten times the value of the stamp omitted if the sum so calculated exceeded HK\$50.⁴⁸⁴

Illustration 1

Consider the stamp duty omitted is HK\$5⁴⁸⁵ and the omission period is more than four months. The applicable penalty would be $\text{HK\$}5 \times 20 = \text{HK\$}100$. In this case, since the penalty exceeded HK\$50, the penalty would be decreased to $\text{HK\$}5 \times 10 = \text{HK\$}50$.

Illustration 2

Consider the stamp duty omitted is HK\$25⁴⁸⁶ and the omission period is more than six weeks but less than four months. The applicable penalty would be $\text{HK\$}25 \times 3 = \text{HK\$}75$. Since the penalty exceeded HK\$50, the applicable penalty would be increased to $\text{HK\$}25 \times 10 = \text{HK\$}250$.

The above illustrations show that the penalty sections of the Hong Kong Stamp Ordinance 1866⁴⁸⁷ lacked simplicity and rendered inconsistent results. The drafting of the penalty sections was not crystal clear and caused confusion as to the penalties applicable to taxpayers, and this undermined the effectiveness of the system established to combat noncompliance.

Initial provisions to counteract stamp duty evasion

The British Stamp Act 1694 stipulated that any person who forged a stamp should receive the death penalty.⁴⁸⁸ Other than this provision, there was no

⁴⁸³ Hong Kong Stamp Ordinance, No 12 of 1866, s 16.

⁴⁸⁴ Ibid s 7.

⁴⁸⁵ 1866 stamp duty rate applicable to charter party. See Hong Kong Stamp Hong Kong Stamp Ordinance, No 2 of 1866, sch.

⁴⁸⁶ 1866 stamp duty rate applicable to deeds of gift. See Hong Kong Stamp Hong Kong Stamp Ordinance, No 2 of 1866, sch.

⁴⁸⁷ No 12 of 1866.

⁴⁸⁸ British Stamp Act 1694 (5 & 6 Wm & Mar c 21), s 11.

other regulation stated in the Act⁴⁸⁹ to counteract stamp duty evasion. By 1815, however, numerous specific anti-evasion regulations had been introduced. For example, the British Stamp Act 1815⁴⁹⁰ stated that if any person, on applying for probate, had estimated the estate to be of a lesser value than the same should have afterwards proved to be, should be liable to a penalty.⁴⁹¹

Looking at the 1866 Hong Kong Stamp Ordinance, it is perplexing to find that the Ordinance did not promulgate any provision to curb the forging of stamps.⁴⁹² This resulted in an absurd outcome of only penalising late payments but not the serious offence of counterfeiting stamps. MacDonnell did not clarify why the British law was not followed. It might have been a legislative oversight. Another possible explanation was that the Governor believed it would be much more expensive to forge a stamp than to pay stamp duty in the formative years of the tax.

In adopting British legislative values, the 1866 Hong Kong Stamp Ordinance⁴⁹³ provided that taxpayers were liable to a penalty not exceeding HK\$250 if found wilfully inserting amounts lower than the true consideration in respect of instruments subject to *ad valorem* duty. Nonetheless, the law in 1866 provided no prescribed procedure or standard that the Stamp Office could follow to determine the open market valuations (for example, for conveyance of properties and disposal of shares). The lack of well-defined law in the area caused the anti-evasion provision to be ineffectual.

Initial provisions to counteract stamp duty avoidance

Surveying the statute law in the eighteenth and the nineteenth centuries, it is found that the British government did not enact general anti-avoidance regulations⁴⁹⁴ to combat stamp duty noncompliance. The reason was that in the eighteenth century and beyond, tax avoidance was not a crime as explained by Blackstone in his *Commentaries on the Laws of England* and Adam Smith in his

⁴⁸⁹ British Stamp Act 1694 (5 & 6 Wm & Mar c 21).

⁴⁹⁰ 44 Geo 3 c 184.

⁴⁹¹ British Stamp Act 1815 (44 Geo 3 c 184), s 41.

⁴⁹² Hong Kong Stamp Ordinance, No 12 of 1866.

⁴⁹³ *Ibid.*

⁴⁹⁴ They are typically statutory rules that empowered revenue authorities to deny taxpayers the benefit of the arrangements that they have entered into for impermissible tax-related purposes.

Wealth of Nations.⁴⁹⁵ Indeed it was sometimes regarded more as a sport.⁴⁹⁶ In reality, even half a century after the introduction of stamp duty in Hong Kong, a British judge said: 'No man in this country is under the smallest obligation, moral or otherwise, so to arrange his legal relationships to his business or his property as to enable Inland Revenue to put the largest shovel into his stores'.⁴⁹⁷ It was contrary to this ethos to legislate in general terms against tax avoidance. Another reason was that the general anti-avoidance concept was too advanced for the eighteenth and the nineteenth centuries. In fact, in Britain, common law general anti-avoidance doctrine was not propounded until the decision of the House of Lords in *W T Ramsay Ltd v Inland Revenue Commissioners*⁴⁹⁸ in 1982.⁴⁹⁹

Nonetheless, it can be recalled that specific anti-avoidance rules had already been prescribed under the British Stamp Act 1694.⁵⁰⁰ It has been said that stamp duty was charged on every sheet of the written instrument in 1694.⁵⁰¹ With the aim of counteracting tax avoidance by reducing the length of the documents, the 1694 British Act required documents to be written in a manner and style acceptable to the British Stamp Office.⁵⁰²

Inheriting the British values, Hong Kong did not legislate in general terms against tax avoidance in 1866. After all, there was no real need for such general legislation in 1866 in Hong Kong as the amount involved was too small to warrant such legal complexity. Even if such law was in place, the Hong Kong Stamp Office would have had a problem in arriving at a common understanding of what constituted tax avoidance as the concept was too sophisticated for Hong Kong at that time.

⁴⁹⁵ Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilization* (2nd edn, Lanham, Maryland, Madison Books 1999), 279–80.

⁴⁹⁶ *Ibid* 398.

⁴⁹⁷ *Ayrshire Pullman Motor Services & DM Ritchie v IRC* (1929) 14 TC 754 (Lord Clyde).

⁴⁹⁸ [1982] AC 300.

⁴⁹⁹ For a discussion on the modern general anti-avoidance doctrine, see Rebecca Prebble and John Prebble, 'Does the Use of General Anti-Avoidance Rules to Combat Tax Avoidance Breach Principles of the Law? A Comparative Study' (2010) 55 *Saint Louis University Law Journal*, 21.

⁵⁰⁰ 5 & 6 Wm & Mar c 21.

⁵⁰¹ See section 2.3.5.

⁵⁰² *Ibid*.

Similar to British stamp duty law, only specific anti-avoidance rules were propounded in Hong Kong in 1866. Inspecting the initial Hong Kong stamp duty legislation,⁵⁰³ in order to prevent avoidance by executing gifts, exchanges or settlements with no money consideration or only nominal consideration, the schedule annexed to the 1866 Ordinance enabled the government to collect a large fixed stamp duty of HK\$25 instead of the *ad valorem* duty in respect of such instruments.⁵⁰⁴ Besides this, there was no other specific anti-avoidance provision drafted.⁵⁰⁵

2.4 The American Stamp Act 1765

Hong Kong was colonised by Britain in 1841.⁵⁰⁶ Before 1841, it was part of the imperial Qing Empire which ruled its provinces through highly institutionalised administrative apparatus consisting of the Six Boards⁵⁰⁷ and the Grand Council⁵⁰⁸ in Peking.⁵⁰⁹ Of the Six Boards, the Revenue Board was charged with the duty of tax collection. The central Imperial Qing government would ask the Chinese Provincial Governors to comment on whether tax policy changes suggested by the central government would work under the specific situations in each province. After receiving responses from the Provincial Governors, the Qing Emperor would direct Revenue Board ministers and the Grand Council members to conduct further debates before making a final decision.⁵¹⁰ The fiscal policies were the personal decision of the Qing Emperor with advice from his ministers and Provincial Governors. It can be deduced that the taxpayers were never a party to the tax policy decision-making processes. Since Hong

⁵⁰³ Hong Kong Stamp Ordinance No 12 of 1866.

⁵⁰⁴ *Ibid* sch.

⁵⁰⁵ Hong Kong, therefore, adopted the British principles to counter stamp duty noncompliance in 1866. The examination identifies the deficiencies of the early Hong Kong stamp duty law in countering noncompliance. These provided background to facilitate a deeper understanding of the nature of the amendments made to the Hong Kong stamp duty system to tackle such shortcomings as Hong Kong progressed in Chapters 3 and 4.

⁵⁰⁶ See section 1.5.

⁵⁰⁷ The Six Boards are Board of Civil Appointments, Board of Revenues, Board of Rites, Board of Wars, Board of Punishments, Board of Works.

⁵⁰⁸ In general, the Grand Council refers to a political body consisted of high ranking officials appointed by the Qing Emperors to assist the Emperors to formulate state policies and draft edicts. For the history of the Qing Grand Council and its duties, see Beatrice S Bartlett, *Monarchs and Ministers: The Grand Council in Mid-Ch'ing China, 1723–1820* (Berkeley, University of California Press 1991). See also Chien Mu, *Traditional Government in Imperial China: A Critical Analysis* (Chun Tu Hsueh and others tr, Hong Kong, Chinese University Press 1982), 127–132.

⁵⁰⁹ Wenkai He, *Paths toward the Modern Fiscal State* (Cambridge Massachusetts, Harvard University Press 2013), 7–8; Chien Mu, *Traditional Government in Imperial China: A Critical Analysis* (Chun Tu Hsueh and others tr, Hong Kong, Chinese University Press 1982), 127–132.

⁵¹⁰ *Ibid*.

Kong was part of the Imperial Qing Empire before colonisation and accustomed to such governing mandate, it would be appropriate for the British government to unobtrusively follow suit and simply direct the Hong Kong Governors from London to impose stamp duty to ease the colonial budget deficit. Nevertheless it has been revealed from an examination of the political resistance which Governor John Davis needed to surmount in his plan to impose rates in Hong Kong in 1845,⁵¹¹ that from the beginning of the colony, it was never the intention of the British government to impose tax from London, but rather to allow taxpayer involvement in the formulation of Hong Kong tax policy.⁵¹² In other words, the Governor had to obtain local political sanction for the imposition of stamp duty.

The foregoing observations drove the research to investigate why the British government chose to adopt an onerous path in promulgating colonial taxes in Hong Kong, and to determine whether there was a strong case to suggest that the political approach adopted to implement stamp duty in Hong Kong was a consequence of the stamp duty history.

An examination of the introduction of stamp duty in America in 1765 is revealing. On the one hand, the examination shows how the imposition of stamp duty by Britain significantly influenced the independence movement in America. On the other hand, it shows the profound impact of the American stamp duty event on Hong Kong's fiscal policy in its early years, notwithstanding that the Imperial Chinese Qing government ceded Hong Kong to Britain sixty years after the British introduced stamp duty in America. The extent to which the American experience affected the introduction of stamp duty into Hong Kong and the colony's finances and government, will be explored to see how far the factors that caused the American Stamp Act to be unacceptable and unsustainable, influenced the British colonial administrative and fiscal policy during the early period following the cession of Hong Kong to Britain.

⁵¹¹ See section 2.1.1.

⁵¹² Ibid.

2.4.1 The introduction of American Stamp Act 1765

The introduction of stamp duty into America in 1765⁵¹³ was mainly due to the French and Indian War⁵¹⁴ during 1754 to 1763. The war was fought primarily between the colonies of Britain and France in North America. Both sides were supported by military units from their parent countries. The British Americans won the war but at the same time the British government began to question what it had gained from all the blood and money sacrificed. The colonies in North America benefited much more than the British government which paid for the war as well as providing military support. The British government advocated that these North American colonies should contribute more to the on-going British military support.⁵¹⁵

In 1765 the British Parliament under the leadership of the Prime Minister George Grenville (in office 1763–1765), passed the American Stamp Act as the first direct tax on American colonies with no vote against it in the Commons and no debate in the House of Lords.⁵¹⁶ The American Stamp Act 1765 ignited enormous colonial opposition and outrage, leading to the first combined resolute effort by the colonists to resist the authority of the British Parliament. Even though the American Stamp Act was repealed in 1766, the events surrounding the tax protests led the American colonists to challenge other aspects of British control leading to eventual and successful revolution against the British, thus gaining their independence in 1783.⁵¹⁷

There were various reasons why the American Stamp Act failed the test of sustainability and caused widespread antipathy. These related to the institution

⁵¹³ P D G Thomas, *British Politics and the Stamp Act Crisis: The First Phase of the American Revolution 1763–1767* (Oxford, Clarendon Press 1975), 98; Edmund S Morgan and Helen M Morgan, *The Stamp Act Crisis: Prologue to Revolution* (New York, Collier Books 1963), 96. Royal assent to the Act was received on 22 March 1765.

⁵¹⁴ The war is also referred to as the Seven Years' War or the War of the Conquest by different historians.

⁵¹⁵ Edmund S Morgan and Helen M Morgan, *The Stamp Act Crisis: Prologue to Revolution* (New York, Collier Books 1963), 19.

⁵¹⁶ P D G Thomas, *British Politics and the Stamp Act Crisis: The First Phase of the American Revolution 1763–1767* (Oxford, Clarendon Press 1975), 98.

⁵¹⁷ Ibid 249–52; Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilization* (2nd edn, Lanham, Maryland, Madison Books 1999), 298–304.

of tax assessment and collection; the 'handles' on the different forms of income and economic activities; and the political process of the tax revision.⁵¹⁸

On the question of tax assessment and collection, the American Stamp Act itself was designed to have tax collected by institutions administered by local residents in the colonies and not by officials sent from Britain. All the money raised by the Act would stay in the colonies and would not be remitted to Britain.⁵¹⁹ These gestures were positive to the sustainability of the system. However, the colonists resented one of the prescribed taxpayer's safeguards to the effect that cases on the American Stamp Act were to be heard by Vice-Admiralty Courts,⁵²⁰ with no jury. The colonists' opinion was that the Vice-Admiralty Courts' jurisdiction, based on tradition, should be confined to marine matters only and tax laws should not be administered by the Vice-Admiralty Courts. The colonists felt that their right to common law trial was undermined and thus clamoured against the American Stamp Act.⁵²¹

To make the American Stamp Act more sustainable and acceptable, the 'handles' attached to different forms of income were lower than the corresponding rates of the British Act at that time. The reduced rates were incorporated to meet the different conditions in the colonies.⁵²² This was another positive step to ensure acceptability and sustainability.

Nevertheless, the number of objects and documents to be taxed was still enormous to the colonists. These included advertisements, newspapers, pamphlets, legal documents of all kind, court judgments, court decrees, court sentences, insurance policies, playing cards, calendars, dice, testimonial, certificates of any degree taken in any university or academy or college,

⁵¹⁸ Martin Daunton, *Trusting Leviathan: The Politics of Taxation in Britain, 1799–1914* (Cambridge University Press 2001), 22. Daunton proposed a few variables that are used for taxation history analysis that are used here.

⁵¹⁹ P D G Thomas, *British Politics and the Stamp Act Crisis: The First Phase of the American Revolution 1763-1767* (Oxford, Clarendon Press 1975), 99.

⁵²⁰ These courts were located in British colonies that were usually granted jurisdiction over local legal matters related to maritime activities, such as disputes between merchants and seamen.

⁵²¹ Edmund S Morgan and Helen M Morgan, *The Stamp Act Crisis: Prologue to Revolution* (New York, Collier Books 1963), 98.

⁵²² P D G Thomas, *British Politics and the Stamp Act Crisis: The First Phase of the American Revolution 1763-1767* (Oxford, Clarendon Press 1975), 99.

seminary of learning, bonds and deeds, and so forth.⁵²³ This list caused intense resentment. The colonists also argued that such measures would weaken their commercial strength. To understand the enormous number of dutiable documents and the tax rates in the America Stamp Act, the following quotation on Britain's stamp duty law is illuminating:

Every species of written or printed document necessary for carrying on a business of mankind, had now been drawn within the grasp of the stamp laws. The scales of duty were arbitrary and jumping. Many transactions were subjected to excessive rates of duty; and every single head of duty had been raised to the highest possible rate.⁵²⁴

The most contentious issue was the political process involved. The motion to levy stamp duty in the American colonies was passed directly by the British Parliament in London. This long-distance approach to taxation led to the unsustainability of the stamp duty proposed, as British politicians in London were out of touch with the real conditions in America. The colonists raised the issue of taxation without representation. They had no direct representation in the British Parliament, having only agents to lobby and advise the British political figures on American matters. They could not tolerate being taxed with no direct representation,⁵²⁵ as this was tantamount to denying their rights as British subjects.⁵²⁶

2.4.2 The American Stamp Act's impact on Hong Kong's constitutional development and fiscal policy

Existing literature does not explain how the American Stamp Act influenced British colonial policy after the American War of Independence and the political process of introducing stamp duty in Hong Kong, nor does it explain the substance of Hong Kong stamp duty law. Yet, by analysing the political and

⁵²³ Duties in American Colonies Act 1765 (5 Geo 3 c 12), ss 1–6.

⁵²⁴ Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 296.

⁵²⁵ The tradition of taxation with representation began in the Britain when King John was compelled to sign the Magna Carta. The key provision was 'No scutage or aid, save the customary feudal ones, shall be levied except by the common consent of the realm.' Essentially, it meant that taxation could only be collected with consent. When King John needed extra revenue, he could not arbitrarily increase taxation, he needed to call his councils of taxpayer representatives and present a case for more taxation. See, Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilization* (2nd edn, Lanham, Maryland, Madison Books 1999), 157–58.

⁵²⁶ US History from Pre-Columbian to the New Millennium, 'The Stamp Act Controversy' <www.ushistory.org/us/9b.asp> accessed 5 March 2014.

philosophical factors related to the introduction of stamp duty in Hong Kong, it can be hypothesised that some of the factors which caused the American Stamp Act to be unacceptable and unsustainable in America, influenced the British colonial administration and its fiscal policy during the early years of British colonisation of Hong Kong.

The Colonial Office in London had central control of Hong Kong after the cession of Hong Kong to Britain in 1841.⁵²⁷ The history of the Colonial Office in London is relevant. The Colonial Office can be dated to the establishment of the Secretary of State for the Colonies in 1768, formed to tackle the situation in America after the introduction of the American Stamp Act. Following Britain's subsequent defeat in the American War of Independence and the formation of the United States of America,⁵²⁸ the position of Secretary of State for the Colonies was abolished and a new official post called the Secretary of State for War and the Colonies was established in 1801. In 1854, military reforms led to the separation of the colonial and military responsibilities of the secretary. The Secretary of State for the Colonies was then appointed to head the Colonial Office, one objective being to exercise control over Hong Kong.⁵²⁹

In general terms the financial philosophy of nineteenth century Britain with regard to its colonies was that after defraying the cost of acquiring the colony, the colonial establishments should be self-sufficient. The colonies should neither rely upon Britain for on-going support nor be subjected to levies of tribute or taxation to support Britain's imperial policies.⁵³⁰ Britain's defeat in America shaped its subsequent fiscal policy to a certain extent to guard against a repeat of the unpleasant experience in America by controlling expenditure on

⁵²⁷ G B Endacott, *Government and People in Hong Kong, 1841-1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 21.

⁵²⁸ The American Stamp Act ignited the Americans' resistance to the British government and ended with the Treaty of Paris in 1783 and Britain's defeat in the war. See Archiving Early America, 'Paris Peace Treaty of 1783' <www.earlyamerica.com/earlyamerica/milestones/paris/> accessed 11 March 2014.

⁵²⁹ Wm Roger Louis, *The Oxford History of the British Empire* (Oxford, Oxford University Press 1999), 15–16; Mandy Banton, *Administering the Empire, 1801-1968: A Guide to the Records of the Colonial Office in the National Archives of the UK* (London, University of London, Institute of Historical Research 2008), 25–26; History of Government curated by The National Archives, 'Administrators of the British Empire' <<https://history.blog.gov.uk/2014/12/08/administrators-of-the-british-empire/>> accessed 8 April 2014; The British Empire, 'Secretaries of State with Responsibility for the Colonies' <www.britishempire.co.uk/biography/secretariesofstate.htm> accessed 10 May 2016.

⁵³⁰ Paul S Reinsch, *Colonial Administration* (London, MacMillan 1912), 83.

British colonies and ensuring the colonies achieved financial independence. There would be no arm's length taxes imposed directly by the British Parliament.

This nineteenth century colonial fiscal policy was apparent from the *Hong Kong Charter* (now known as Letters Patent) dated 5 April 1843. The *Rules and Regulations for her Majesty's Colonial Service* (Colonial Regulations) issued from London in 1843 served as guidelines and directives to Hong Kong Governors on administrative and financial matters.

The Letters Patent stipulated that the Hong Kong Governor, who was appointed by the British monarch on the advice of the British Foreign Secretary, was to constitute and preside over a Legislative Council and an Executive Council by nominating three officials to each of the councils. These Hong Kong Governors were usually British civil servants⁵³¹ selected from the British Colonial Service and who had served in other colonies⁵³² before taking up the post in Hong Kong.⁵³³ In the councils, there were official and unofficial members. The official members⁵³⁴ were persons holding governmental appointments in the Hong Kong government. Initially there was no unofficial member, either British or Chinese, appointed to the councils. The first two British Legislative Council unofficial members were introduced in 1850.⁵³⁵ The first Legislative Council Chinese unofficial member was introduced in 1880.⁵³⁶ The Executive Council was set up to advise and assist the Governor. It was akin to the cabinet in

⁵³¹ P K Li, *Hong Kong from Britain to China Political Cleavages, Electoral Dynamics and Institutional Changes* (England, Ashgate Publishing Ltd 2000), 21.

⁵³² See, G B Endacott, *A Biographical Sketch-Book of Early Hong Kong* (Singapore, Eastern Universities Press 1962), 4–51, for the careers paths of the early Hong Kong Governors in the British Colonial Service. The chapters gave vivid accounts of the Governors' personal qualities, their previous experiences in the field before becoming the Hong Kong Governors or even their personal friendships with the Foreign Secretary which formed the basis for their selections to be the Governors of Hong Kong.

⁵³³ John M Carroll, *A Concise History of Hong Kong* (Hong Kong, Hong Kong University Press 2007), 4.

⁵³⁴ The official members could be the Major General in Command, the Chief Justice, the Colonial Secretary, Attorney General, Chief Magistrate as selected by the Governor. See, G B Endacott, *Government and People in Hong Kong, 1841-1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 40.

⁵³⁵ G B Endacott, *Government and People in Hong Kong, 1841–1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 43.

⁵³⁶ Steve Tsang, *A Modern History of Hong Kong* (Hong Kong University Press 2004), 27.

Britain.⁵³⁷ The Governor with the advice of the Legislative Council was given full authority to make laws for the colony of Hong Kong subject to three limitations. First, the law proposed in the Hong Kong Legislative Council was subject to the instructions and approvals given by the Secretary of State for the Colonies who headed the Colonial Office in London; second, the law proposed by the Hong Kong Legislative Council was subject to the power of disallowance by the Crown; and third, the British Parliament retained the power to enact legislation over Hong Kong.⁵³⁸

Regarding the last two limitations, the British government hardly ever exercised its right to intervene in the internal affairs of Hong Kong. The British Parliament had the right to promulgate laws that were binding in Hong Kong, but by convention, this was only exercised when it was necessary for the standardisation of the law to be achieved throughout Britain and its colonial territories.⁵³⁹ As such, in most circumstances, the Secretary of State in the Colonial Office would comment and make the final decision pertaining to the laws originating from the Hong Kong Legislative Council based on the reports from the Hong Kong Governors, and occasionally, the petitions from the Hong Kong inhabitants.⁵⁴⁰

According to the 1843 Colonial Regulations, Governors needed to prepare a schedule of expenditure to be charged against the coming year's estimated colonial revenues before the end of June each year. The document was required to be vetted in the Legislative Council and upon majority concurrence, would be passed as an Ordinance and sent to London for the joint approval of the Colonial Office and the British Treasury. It was manifestly stated in the 1843 Colonial Regulations that any proposed taxation measures to be effected in

⁵³⁷ Norman Miners, *The Government and Politics of Hong Kong* (5th edn, Hong Kong, Oxford University Press 1975), 75.

⁵³⁸ G B Endacott, *Government and People in Hong Kong, 1841–1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 22.

⁵³⁹ Norman Miners, *The Government and Politics of Hong Kong* (5th edn, Hong Kong, Oxford University Press 1975), 61.

⁵⁴⁰ See for example, Letter from Richard MacDonnell to Henry Herbert (10 September 1866), CO129/115, 32–41; Memorial and Protest against the Stamp Ordinance 1866 (29 August 1866), CO129/115, 52–53.

Hong Kong, as with expenditure, required the joint approval of the British Treasury and the Colonial Office.⁵⁴¹

In retrospect, mindful of the factors leading to the repeal of the American Stamp Act, certain policies pursued by the British Colonial Office in the nineteenth century could be seen as evidence that lessons had been drawn from the ill-fated introduction of the American Stamp Act. These policies affected how Hong Kong was governed and financed in the nineteenth century. First, the general approach specified by the Colonial Office in the nineteenth century was not to spend extravagantly on Hong Kong, encouraging the colony to achieve financial independence as soon as possible. This helped to curtail the previous tendency of the British Parliament to impose taxes on colonies at arm's length to support Britain's own financial needs, and had been the cause of its dire troubles in America. Second, the Governor of Hong Kong initiated tax-related legislation, contrasting with the American Stamp Act which originated, and was drafted, in London. The functions of the Colonial Office and Treasury in London were to examine the Hong Kong Governor's report on the Hong Kong Legislative Council debates and local inhabitants' reactions to any proposed tax, and to offer the final approval or disapproval of the proposed tax legislation. Since local debates occurred in the Hong Kong Legislative Council, the problem of taxation without representation raised during the American Stamp Act episode was avoided. Third, the Governor of Hong Kong would initiate the tax legislation. He would be *au fait* with the Hong Kong environment, and thus better placed than London-based officials to propose any tax measure, and who might not be familiar with Hong Kong or lack a clear understanding of the latest social, economic and political conditions in the colony. With the lessons learned from the American Stamp Duty episode, measures and governing principles which aimed to ensure the sustainability and acceptability of the tax legislation had evolved and were applied to the colony of Hong Kong. The introduction of stamp duty in Hong Kong was subject to such tenets.

These lessons continued to have an impact even after the 1997 ceding of British sovereignty. The Hong Kong Basic Law⁵⁴² replaced the British Letters

⁵⁴¹ *Rules and Regulations for Her Majesty's Colonial Service* (London, Her Majesty's Stationery Office 1843), 87–88.

Patent and the Royal Instructions for Hong Kong after the British ceding of Hong Kong to the People's Republic of China (PRC) in 1997. The Basic Law serves as the constitutional document for the Hong Kong Special Administrative Region (HKSAR) of the PRC. Article 106 of the Basic Law provides that:

1. The HKSAR shall have independent finances.
2. The HKSAR shall use its financial revenues exclusively for its own purposes, and they shall not be handed over to the Central People's government of China.
3. The Central People's government of PRC shall not levy taxes in the HKSAR.

The notions under Article 106 are very similar to the historic British governing principles for its colonies. The drafting of Article 106 took into account the successful experience of Hong Kong under British rule. The political and ideological forces which originated from stamp duty events still have significant influence on Hong Kong's governance after the departure of the British. Such methods were adopted to ensure Hong Kong's social stability after the 1997 cession.

2.5 Conclusion

The evidence gathered shows that the primary reason for the 1866 implementation of stamp duty in Hong Kong was to raise money. The evidence also confirms stamp duty as an effective tool in raising revenue in Hong Kong, even in its formative year.

Although revenue-raising was the dominant aim for the introduction of the Hong Kong stamp duty regime, there were other non-financial reasons behind the implementation of stamp duty in Hong Kong. Close examination of the communications between Governor Sir Richard MacDonnell (in office 1866–

⁵⁴² The Hong Kong Basic Law, serves as the constitutional document of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (PRC). It was adopted on 4 April 1990 by the Seventh National People's Congress (NPC) of the People's Republic of China, and went into effect on 1 July 1997 (replacing the Letters Patent and the Royal Instructions) when Hong Kong being former colony of the British Empire was handed over to the PRC. The Basic Law was drafted in accordance with the Sino-British Joint Declaration on the Question of Hong Kong (The Joint Declaration), signed between the Chinese and British governments on 19 December 1984. The Basic Law stipulates the basic policies of the PRC towards the Hong Kong Special Administrative Region for a period of fifty years after 1997 cession. See Hong Kong Government, 'The Basic Law of Hong Kong' <www.basiclaw.gov.hk/en/index/index.html> accessed 12 September 2014.

1872) and the Secretary of State for the Colonies, as well as other extra-statutory sources, demonstrates the imposition of stamp duty in Hong Kong had the secondary purpose of widening the tax base as well as to improve the living conditions of the poorer class. The evaluation of evidence gathered demonstrates that the Governor's perceptions with regard to stamp duty being an effective medium by which to widen the tax base, was impeccable. However, the historical evidence shows that the imposition of stamp duty was not instrumental in improving living conditions in Hong Kong during the decade following implementation.

Besides the primary financial, as well as the secondary social, objectives, it has also been established that stamp duty was chosen for certain practical reasons. The first and foremost of these was that there were simply no better options available. The evidence evaluated in the chapter demonstrates convincingly why the other alternatives commonly adopted by colonial governments in the nineteenth century, were ruled out of consideration for Hong Kong. Customs duties and export duties were not possible due to the economic structure of Hong Kong as a trading centre with no natural resources. It has also been established that income tax was ruled out, as it required the declaration of income and inquisitorial proceedings that the Hong Kong community, especially the Chinese, were judged not ready to embrace.

The investigation also deduced the requirement that political sanction be obtained, playing a role in the selection of stamp duty as the second form of taxation in Hong Kong. It has been ascertained in the analysis that stamp duty was a widely accepted tax in nineteenth century Britain because it was convenient for tax administrators, and largely unnoticed by the taxpaying public. This led to the conclusion that MacDonnell anticipated ease of approval by the Secretary of State for the Colonies as well as the British Inland Revenue Authority in London for the implementation of stamp duty, as compared to other possible revenue-raising measures.

The evidence presented and analysed in this chapter shows that two historical events in the history of stamp duty, namely its adoption by the British government in 1694 and the Stamp Act crisis in America in 1765, are pivotal in understanding the development of Hong Kong Stamp Duty. The British Stamp

Act 1694,⁵⁴³ which was itself based on the stamp duty policy of the Dutch, was the genesis of the first 1866 Hong Kong Stamp Ordinance.⁵⁴⁴ The American Stamp Act crisis was an important influence in the development of the Hong Kong stamp duty legislation.

Turning to how the 1866 Hong Kong Stamp Ordinance⁵⁴⁵ achieved its initial legislative form, an assessment of the British origins of the provisions reveals three key influences.

First, the analysis of the development of the British stamp legislation from 1694 to 1866 concluded that the chargeable instruments that appeared in the 1866 Hong Kong Stamp Ordinance⁵⁴⁶ were originally chosen for revenue objectives when they were first introduced under various British Stamp Acts. The evidence overtly shows that there were no plausible non-financial objectives considered by the British Parliament for selecting these instruments.

Second, the investigation reveals the 1866 Hong Kong Stamp Ordinance⁵⁴⁷ inherited many British stamp duty ingredients that were valuable in soliciting initial acceptance as well as maintaining the stamp duty system sustainability. As clear evidence, it has been seen that Hong Kong had inherited the stamp duty legislation drafting method of grouping taxable instruments under a separate distinct schedule to ensure better comprehension of the stamp legislation. The older confusing British method of prescribing stamp duty legislation, which was in use before 1804, was omitted. It was also found that MacDonnell had adopted the principles of the penny tax system. The penny tax system was then, a revolutionary stamp duty collection system invented in Britain in 1853. The central concept was to improve compliance by creating a convenient stamp duty payment environment together with a low fixed rate. Indeed, the study concludes that Hong Kong was given a head start by adopting many concepts that took the British government over a hundred years to polish from ineffectual, inefficient and flawed origins. The evidence affirms that these British ingredients were time-tested and many unaccommodating features were filtered out before being incorporated into the Hong Kong Stamp

⁵⁴³ 5 & 6 Wm & Mar c 21.

⁵⁴⁴ No 12 of 1866.

⁵⁴⁵ Hong Kong Stamp Ordinance, No 12 of 1866.

⁵⁴⁶ Ibid.

⁵⁴⁷ Ibid.

Ordinance in 1866.

Third, it may be concluded from the evidence, that during the formative years of the stamp duty law, the Hong Kong government was inherently resource limited in implementing the full scope of the elements of the British stamp duty system. In certain instances, the Hong Kong government only had the capability to adopt a partial selection of those elements. One such example relates to the Hong Kong Magistrates system. The Magistrates were not legally qualified for the task as the magistracy in Hong Kong during that era was effected to levy punishments for violations of stamp duty legislation rather than to hear taxpayer's disputes with the Stamp Office and make equitable decisions. Another piece of evidence to justify this conclusion is based on the analysis of the adjudication function in its formative years. Unlike in the Britain, where the adjudicators were experts in the stamp duty field, novice staff in the 1867 Hong Kong Stamp Office provided the adjudication services.

The evidence demonstrates that the American revolt instigated by the 1765 imposition of stamp duty in North America by the British Parliament, directly and without local discussion, had lasting implications for Britain's colonial policies. The British government took the lessons learned from the 1765 American revolt seriously and prevented the same mistakes from recurring when implementing stamp duty in Hong Kong. The evidence indicates that the Colonial Office implemented a system to ensure stamp duty was enacted in Hong Kong with local discussion and with only slight intervention from London to ensure initial acceptability as well as longer term sustainability.

Chapter 3 Primary imperatives driving the development of Hong Kong stamp duty

3.1 Introduction

Governor Sir Richard MacDonnell (in office 1866–1872) described the introduction of stamp duty in Hong Kong in 1866 as a ‘critical moment in the history of the colony.’⁵⁴⁸ Chapter 2 identified the salient features and analysed the historical background to the implementation of the Hong Kong stamp duty system in 1866. Chapter 3 goes beyond that emphasis and focuses on the imperatives that drove the subsequent development of the Hong Kong stamp duty system during British rule of the colony.

Fundamentally, this chapter identifies the sometimes obscure primary forces which notionally drove the development of the Hong Kong stamp duty system from its introduction until the end of British rule in Hong Kong in 1997. The chapter examines the relative importance of these identified drivers and how their nature and primacy changed over time. Historically, these demands were often not publicly articulated due to the Hong Kong government’s apparent lack of transparency in relation to the objectives underpinning their stamp duty policies. For example, whilst the Hong Kong government might have announced that its stamp duty policy was to restore stamp duty equity, its associated actions amidst other evidence may have indicated a revenue enhancement motive.

In order to discern these primary drivers and their comparative significance, the chapter analyses the effects of the relevant stamp duty law in its historical context, relying in part on previously undisclosed correspondence between the Hong Kong Governors and the British Colonial Office. This chapter outlines the primary imperatives and prioritises them in order of their relative importance to the Hong Kong economy. In order to discern the comparative significance of the primary imperatives identified in this chapter, three factors have been used in their determination:

⁵⁴⁸ Letter from Richard MacDonnell to Henry Herbert (10 September 1866), CO129/115, 33.

1. The frequency of enacting stamp duty law in response to the identified imperative.
2. The significance of the resulting stamp duty law made in response to the identified imperative.
3. The sustainability of the resulting stamp duty law made in response to the identified imperative.

A secondary aim of Chapter 3 is to identify the conditions that led to successful design and implementation of changes in the Hong Kong stamp duty regime to respond to these imperatives. At the outset, it is necessary to define the meaning of 'success' in this context. Three main criteria have been adopted in this study:

1. The extent to which the changes achieved their stated aims as articulated by the Hong Kong government. The changes were successful if the stated aims were attained.
2. The extent to which the stamp duty changes had desirable by-products. The changes were successful if such desirable by-products were propagated.
3. The sustainability of the changes. If the changes became redundant in the short- to medium-term, they were deemed unsuccessful.⁵⁴⁹

By studying the successful features, useful and informed lessons could be learned to ensure the sustainability of the Hong Kong stamp duty system, and to strengthen its design. Some of these lessons would also be valuable in improving the effectiveness of governance of the present day stamp duty system. In the process of identifying successful changes, the unsuccessful features are also highlighted. Such unsuccessful features are important markers to be heeded in formulating future changes in the stamp duty system.

⁵⁴⁹ These criteria for what constitutes successful tax reforms or changes was adopted from, Cedric Sandford, *Successful Tax Reform: Lessons from an Analysis of Tax Reform in Six Countries* (Bath, Fiscal Publications 1993), 5, which was originally not intended for Hong Kong stamp duty.

3.2 The classification of stamp duty changes⁵⁵⁰

The phrase ‘stamp duty changes’ can have different meanings in different contexts. Thus it is important to define the terminology used in this study. To make fruitful deductions from stamp duty changes requires a clear framework of terms.

A stamp duty system consists of two major elements. The first element is the *stamp duty structure* which refers to the tax rates and tax bases. The second element is the *stamp duty mechanism* which refers to the regulations governing stamp duty administration and stamp duty compliance.⁵⁵¹

Stamp duty changes can be classified either as a reform or an amendment. In this study in particular, the term *stamp duty reform* is used to describe the events modifying both the stamp duty structure and the mechanism. On the other hand, the term *stamp duty amendment* refers to either modifying the stamp duty structure or the mechanism. The reform or amendment can either be comprehensive or partial depending on the scope of change.⁵⁵²

The objectives of the reform or amendment can be grouped into three categories, enabling meaningful conclusions to be drawn from the analysis:

1. Vertical equity enhancing or horizontal equity enhancing.⁵⁵³
2. Revenue expansion, revenue neutral, or revenue contractionary.⁵⁵⁴
3. Economically neutral or interventionist.⁵⁵⁵

⁵⁵⁰ Certain ideas were adopted from Malcolm Gills, ‘Towards a Taxonomy for Tax Reform’ in Malcolm Gills (ed), *Tax Reforms in Developing Countries* (Durham, Duke University Press 1989), 1–26 which were originally not intended for application in the stamp duty environment.

⁵⁵¹ For example, assessment processes, collection mechanisms, safeguard procedures, anti-avoidance measures, counter-evasion doctrines, incentive policies and exemption rules.

⁵⁵² Reform or amendment can be comprehensive – encompassing most elements of the stamp duty system – or partial – confined to only a few components of the system.

⁵⁵³ Vertical stamp duty equity means that instruments with higher values have higher tax rates. This is in line with Adam Smith’s notion that taxpayers who entered into instruments with unequal values should be taxed unequally. This reflects the principle that taxpayers involved with instruments having higher values are financially better off and therefore should pay more tax. Horizontal equity in stamp duty means that all taxpayers, regardless of their wealth or social status, pay the same amount of tax for the same instrument with the same value involved. For example, in Hong Kong in the nineteenth century, British soldiers who used bills of exchange to remit money to London would pay the same amount of stamp duty as British merchants who remitted the same amount of money to London. It would be termed a horizontal inequity if British soldiers were taxed a lesser amount.

⁵⁵⁴ Stamp duty reform or amendment may be designed to increase revenue. Revenue neutral modifications merely seek to replace one source of revenue with another. In rare cases, tax reform or amendment may be designed to reduce tax revenue.

3.3 Financial imperatives

The overall aim of section 3.3 is to identify and analyse what were the most powerful imperatives that drove the changes in stamp duty law during the period 1866 to 1997 and to evaluate the effectiveness of the approaches adopted to meet the imperatives.

This section attempts to identify the financial imperatives and discover to what extent those financial demands were influential in the drafting of Hong Kong stamp duty law. At its simplest, the financial impetus comprised the pecuniary necessities which drove the Hong Kong government to utilise its stamp duty system to pursue revenue-raising objectives. However, besides this intrinsic impetus, this section also seeks to identify other wider fiscal drivers which encompassed combinations of other administrative demands, such as ease of operation, countering evasion and fraud and the like, as well as equity restoration which steered the development of stamp duty regulation, ultimately leading to revenue raising. To further clarify the terms used in this study, ‘financial imperative’ relates to the pure demand for monetary receipts whereas ‘fiscal imperative’ relates to the need for government policies to influence the development of the stamp duty system which may or may not be for the sole purpose of raising revenue. It is appropriate to regard financial imperatives as a subset of fiscal imperatives.

3.3.1 Governor Sir Richard MacDonnell’s duplicity

MacDonnell tabled a bill in the Hong Kong Legislative Council to amend the Hong Kong Stamp Ordinance 1866 on 5 May 1868,⁵⁵⁶ just eight months after the implementation of the Ordinance. MacDonnell publicly announced that his objective for the Ordinance amendment was equity restoration, though his perceived actions pointed to the possibility that revenue enhancement might have been the real objective. Section 3.3.1 investigates the Governor’s motives in introducing the Bill, and determines whether he ultimately achieved his aim.

⁵⁵⁵ Economically neutral stamp duty changes are those that do not affect economic activities. Government may use the stamp duty tax system to encourage or discourage certain economic activities. Such reform or amendment is described as interventionist.

⁵⁵⁶ Hong Kong Hansard 23 May 1868.

Before tabling the Stamp Duty Bill, MacDonnell appointed a Commission of Inquiry (the Commission) consisting of the Hong Kong Acting Colonial Treasurer, W Alexander, the Collector of Stamp Revenue, F W Mitchell, as well as a Hong Kong Legislative Council unofficial member, Phineas Ryrie.⁵⁵⁷ The Commission's brief was to prepare a report on the subject of Hong Kong stamp duty. To obtain input from the business community, the Commission held consultation meetings with the Hong Kong General Chamber of Commerce (the Chamber of Commerce). Ryrie declared at the inaugural consultation meeting with the members of the Chamber of Commerce that MacDonnell 'was convinced of the inequities that had been found to exist in the 1866 Hong Kong Stamp Ordinance' and 'the Governor intended to have the legislation thoroughly revised to sift its imperfections and to restore equities'.⁵⁵⁸

In essence, the Commission recommended that:⁵⁵⁹

1. Bills of exchange and promissory notes to be given an *ad valorem* scale together with the exemption for bills under HK\$100. A table ranging from HK10¢ for bills of exchange between the values of HK\$100 to HK\$1,000 to HK\$1 for bills of exchange over HK\$10,000 was recommended. The concept of applying different rates for bills drawn singly or in sets was to be abolished. This proposal was to replace the original fixed rate.⁵⁶⁰
2. Bonds concerning bottomry and respondentia,⁵⁶¹ charter parties,⁵⁶² mortgages,⁵⁶³ re-assignments of mortgaged property,⁵⁶⁴ letters of

⁵⁵⁷ A prominent British businessman who was a Senior Partner of Turner & Co (an opium trading firm), Director of Hong Kong Diary Farm Company and Founder of the Hong Kong High Level Tramway Company.

⁵⁵⁸ The Hong Kong General Chamber Of Commerce General Meeting, In Re: The Stamp Act (20 March 1868), CO129/131, 58.

⁵⁵⁹ Report of Commission on Hong Kong Stamp Ordinance 1866 (27 March 1868), CO129/131, 56–57.

⁵⁶⁰ The rate was HK\$1 for all bills of exchange if drawn singly and HK50¢ on each part of the set if drawn in sets under the original Stamp Ordinance 1866 (Ordinance No 12 of 1866). See section 2.3.2.

⁵⁶¹ The rates were HK\$10 for sums secured not exceeding HK\$10,000 and HK\$20 for sums equal to or exceeding HK\$10,000 under the original Stamp Ordinance 1866 (Ordinance No 12 of 1866). See section 2.3.2. A reduced *ad valorem* duty of HK50¢ for every HK\$1,000 or part thereof was proposed. Bottomry bonds were loans obtained by shipmasters by pledging the ships as the collateral. If the principal and interest were not paid at the appointed time after the ships' safe returns, the creditors would forfeit the ships. The use of such loan was when ships needed emergency funding for repair during their voyages and the shipmasters could not contact the ship owners to arrange funding. The shipmasters could arrange a loan by pledging the ships and executing a bottomry bond. Respondentia bonds referred to the shipmasters obtaining loans by pledging the goods on the ships under similar situations.

hypothecation⁵⁶⁵ and leases at a rent,⁵⁶⁶ were to attract reduced *ad valorem* duties or revised rates to restore vertical equities.

3. Transfer of shares in any public company to attract a reduced *ad valorem* rate of 1/8% of the share prices to replace the previous *ad valorem* rate.⁵⁶⁷
4. New heads of charge were recommended to make up the potential loss of revenue. The new heads were: shipping insurance policies at a fixed rate of HK10¢ each, articles of clerkship to facilitate future admission as a solicitor at fixed rates of HK\$50, warrants of attorney⁵⁶⁸ at the *ad valorem* rate of HK10¢ per HK\$100, cognovit⁵⁶⁹ and arbitration awards at an *ad valorem* rate of HK10¢ per HK\$100.

⁵⁶² The rate was HK\$5 for all charter parties under the original Stamp Ordinance 1866 (Ordinance No 12 of 1866). See section 2.3.2. An *ad valorem* scale was proposed with a table ranging from HK\$1 for vessels not exceeding 200 tons to HK\$5 for vessels exceeding 1,000 tons plus HK50¢ for every 100 tons thereafter. Charter parties were contracts between the owners of vessels and the charterers for the use of vessels.

⁵⁶³ The applicable *ad valorem* rate under the original Stamp Ordinance 1866 (Ordinance No 12 of 1866) was HK25¢ for every HK\$100 or part thereof of the consideration for transaction values up to HK\$1,000. After the first HK\$1,000, HK\$2 for every additional HK\$1,000 or part thereof. See section 2.3.2. A reduced *ad valorem* scale of HK\$1 on the first HK\$1,000 and HK50¢ on each subsequent HK\$1,000 or part thereof was proposed.

⁵⁶⁴ The applicable *ad valorem* rate under the original Stamp Ordinance 1866 (Ordinance No 12 of 1866) was HK25¢ for every HK\$100 or part thereof of the consideration for transaction values up to HK\$1,000. After the first HK\$1,000, HK\$2 for every additional HK\$1,000 or part thereof. See section 2.3.2. A reduced *ad valorem* rate of HK10¢ per HK\$1,000 or part thereof was proposed.

⁵⁶⁵ The applicable *ad valorem* rate under the original Stamp Ordinance 1866 (Ordinance No 12 of 1866) was HK25¢ for every HK\$100 or part thereof of the consideration for transaction values up to HK\$1,000. After the first HK\$1,000, HK\$2 for every additional HK\$1,000 or part thereof. See section 2.3.2. A fixed rate of HK\$1 was proposed. Letters of hypothecation were documents which authorised banks or lenders to reprocess and sell the pledged items in the event of a default.

⁵⁶⁶ A completely revised *ad valorem* scale together with the exemption for all rentals of yearly rent under HK\$100 was proposed.

⁵⁶⁷ The applicable *ad valorem* rate under the original Stamp Ordinance 1866 (Ordinance No 12 of 1866) was HK25¢ for every HK\$100 or part thereof of the consideration for transaction values up to HK\$1,000. After the first HK\$1,000, HK\$2 for every HK\$1,000 or part thereof. See section 2.3.2.

⁵⁶⁸ Warrants of attorney were documents that enabled attorneys named in them to appear in courts on behalf of the persons giving the warrants and to confess judgements entered against them.

⁵⁶⁹ Creditors might ask the borrowers to sign a cognovits note when credits were extended. If the debtors fell into arrears, the creditors could obtain judgements against the debtors without notification to the debtors.

By comparing the recommendations of the Commission with the 1868 bill to amend the Hong Kong Stamp Ordinance 1866,⁵⁷⁰ it was clear that MacDonnell adopted recommendation 2 and only partially adopted recommendations 1, 3 and 4.

Recommendation 1 concerned bills of exchange. While the Governor agreed to the application of an *ad valorem* scale, he disagreed with the rates suggested by the Commission. The following table compares the original rates under the Hong Kong Stamp Ordinance 1866 with the new rates under the Hong Kong Stamp Amendment Ordinance 1868:

Table 3.1: Comparison of stamp duty rates for bills of exchange, 1866–1868

Bills of exchange values	Drawn singly (Before the amendment)	Drawn singly (After the amendment)	Drawn in sets (Before the amendment)	Drawn in sets (After the amendment)
	(HK\$)	(HK\$)	(HK\$)	(HK\$)
Below HK\$100	1.00	0.30	0.50	0.15
HK\$100 > HK\$3,000	1.00	1.00	0.50	0.50
Above HK\$3,000	1.00	1.50	0.50	0.75

For the category value above HK\$3,000, the new rates for bills of exchange drawn either singly or in sets increased by 50%. For the category value below HK\$100, the tax rates for bills of exchange drawn either singly or in sets decreased by 70%. The principle of applying a low rate on voluminous transactions of small value bills of exchange to encourage taxpayers' compliance, led to an overall revenue increase, as was earlier demonstrated by Gladstone's penny tax reform in 1853.⁵⁷¹

Recommendation 3 dealt with the transfer of shares. MacDonnell rejected the rate of 1/8% of share prices as proposed by the Commission and advocated a rate of HK50¢ for every HK\$500 or fraction thereof. Under MacDonnell's

⁵⁷⁰ *Hong Kong Government Gazette*, '1868 Stamp Duty Bill Read First Time' (Hong Kong Government 9 May 1868).

⁵⁷¹ See section 2.3.6.

suggested rates, the government had a greater potential for collecting more stamp duties.

As to recommendation 4, MacDonnell accepted all the new heads of charge as proposed. However, he did away with the low *ad valorem* duty for warrants of attorney, and for cognovit and arbitration awards, and replaced them with fixed rates of HK\$5 and HK\$1 respectively. In addition to the Commission's recommendation on additional heads of charge, MacDonnell added a head of charge on co-partnership deeds, which attracted a fixed duty of HK\$5 per deed.

By comparing the Commission's recommendation and MacDonnell's final decision, as well as critically reviewing the associated circumstance, it is submitted that his real intention was financial for three principal reasons.

First, MacDonnell agreed to most of the Commission's suggestions granting *ad valorem* rates on certain instruments in order to ensure vertical equity under recommendation 2; however, the decrease in tax revenue was insignificant as the stamp duties charged on these instruments were minimal.⁵⁷² Further he did not endorse some of the Commission's suggestions to reduce the rates greatly for some instruments. It was clear that after the amendments, the decrease in stamp duty revenue would be small and would certainly not require seven new chargeable instruments⁵⁷³ to ensure revenue neutrality.

Second, since stamp duty from bills of exchange accounted for 42% of the total stamp revenue,⁵⁷⁴ the analysis of changes made to the bills of exchange tax

⁵⁷² The related instruments were bonds, chartered parties, mortgages, re-assignment of mortgages, leases for rent. The percentages of the instruments' contribution to the overall stamp revenue can be extracted from the data provided in a tabular statement prepared by the Hong Kong Collector of Stamp Duty, F W Mitchell, circulated during the Hong Kong General Chamber of Commerce General Meeting on: The Stamp Act, Return shewing the Revenue derived from Stamps, impressed under each article of the Schedule to the Stamp Ordinance, 1866, and under 20th Section thereof, during the period from the opening of the Stamp Office, to 29 February 1868, to which is added the revenue for Adhesive Stamps sold during the same period (12 March 1868), CO129/131, 60.

⁵⁷³ These were broker notes, bank cheques, shipping insurance policies, articles of clerkship, warrants of attorney, cognovit and arbitration awards and co-partnership agreements.

⁵⁷⁴ See data provided by a tabular statement prepared by the Hong Kong Collector of Stamp Duty, F W Mitchell circulated during the Hong Kong General Chamber of Commerce General Meeting on: The Stamp Act, Return shewing the Revenue derived from Stamps, impressed under each article of the Schedule to the Stamp Ordinance, 1866, and under 20th Section thereof, during the period from the opening of the Stamp Office, to 29 February 1868, to which

rates strongly suggests that revenue enhancement was the real objective for the exercise as a whole, rather than equity restoration.

Third, in hindsight, chargeable instruments added in the amendment were exactly those MacDonnell had carefully sifted from the Hong Kong Stamp Ordinance 1866⁵⁷⁵ in order to obtain the approval of the Legislative Council.⁵⁷⁶ After only six months,⁵⁷⁷ he could not openly announce his wish to add back those chargeable instruments for revenue purposes. Instead, he directed a Commission to review the system on equity grounds as a *façade* to pave the way for introducing new chargeable instruments into the system to gain revenue.

There is other evidence to show that MacDonnell's objective in introducing the stamp duty amendment was revenue enhancement.

The Commission announced to the Chamber of Commerce that the Governor's initiation of the 1868 stamp duty amendment was intended to restore equity to the stamp duty system and was revenue neutral. Hence, any reduction in taxes due to the amendment had to be made-up by the introduction of new heads of charge. It is perplexing why the Governor initiated an amendment exercise on equity grounds, as the public was not calling for any such reform of the stamp duty system. This was confirmed by the Chamber of Commerce. For example, when debating the stamp duty treatment of bills of exchange, a Chamber of Commerce member, Mr Bostman pointed out that 'he had never heard of

is added the revenue for Adhesive Stamps sold during the same period (12 March 1868), CO129/131, 60.

⁵⁷⁵ No 12 of 1866.

⁵⁷⁶ Speech of His Excellency Sir Richard Graves MacDonnell CB in reply to a Memorial and a Protest against a Proposed Ordinance to Impose Stamp Duties (5 September 1866), CO129/115, 48.

⁵⁷⁷ The actual implementation of the 1866 Hong Kong Stamp Ordinance was on 10 October 1867; see data provided by a tabular statement prepared by the Hong Kong Collector of Stamp Duty, F W Mitchell circulated during the Hong Kong General Chamber of Commerce General Meeting on: The Stamp Act, Return shewing the Revenue derived from Stamps, impressed under each article of the Schedule to the Stamp Ordinance, 1866, and under 20th Section thereof, during the period from the opening of the Stamp Office, to 29 February 1868, to which is added the revenue for Adhesive Stamps sold during the same period (12 March 1868), CO129/131, 61. The proposal to amend the stamp duty legislation was announced to the members of the Hong Kong Chambers of Commerce on 17 March 1868, see The Hong Kong General Chamber Of Commerce General Meeting, In Re: The Stamp Act (20 March 1868), CO129/131, 58.

hardship of the present schedule on drawers of bills of exchange.⁵⁷⁸ Another member, Mr Delbanco reported that he 'had not heard of any great complaints as to the rate on bills of exchange.'⁵⁷⁹ These examples are indicative that MacDonnell's real intention was to boost revenue, as there was no evidence of public demand for stamp duty incidence to be made more equitable.

In MacDonnell's correspondence to the Secretary of State for the Colonies seeking London's approval for the 1868 Ordinance, he stressed he was under pressure to raise at least HK\$110,000 annually from stamp duty.⁵⁸⁰ The revenue raised during the eight months following the incorporation of the law was HK\$65,595,⁵⁸¹ around 10.5% below his forecast.

MacDonnell also informed the Secretary of State that he had discarded the Chamber of Commerce's suggested schemes as 'the speakers who advocated the most extensive abolition of stamp duties commanded the greatest applause.'⁵⁸² As such he was not able to 'safely accept many of the Commission's suggestions.' He expressed the need to add new heads of charge to the existing stamp duty legislation as well as to adjust the tax rates to ensure stamp revenue could be raised.⁵⁸³ If his stamp duty amendment failed to produce the targeted revenue, he would implement another non-stamp duty fiscal Ordinance to raise revenue.⁵⁸⁴

The evidence confirms that MacDonnell hid his real intentions from the Legislative Councillors and the Hong Kong public so that his revenue-driven policy could withstand public scrutiny and pass through the Hong Kong public and Legislation Council with minimal resistance. With MacDonnell's strategic ploy enhancing acceptability, the bill to amend The Stamp Ordinance, 1866 was passed successfully on 30 May 1868 with no protest. Accordingly, the 1868 Hong Kong Stamp Amendment Ordinance was enacted.⁵⁸⁵

⁵⁷⁸ The Hong Kong General Chamber Of Commerce General Meeting, In Re: The Stamp Act (20 March 1868), CO129/131, 59.

⁵⁷⁹ Ibid 58.

⁵⁸⁰ Letter from Richard MacDonnell to Richard Grenville (10 June 1868), CO129/131, 48.

⁵⁸¹ Ibid 50.

⁵⁸² Ibid 48.

⁵⁸³ Ibid 50.

⁵⁸⁴ Ibid.

⁵⁸⁵ No 5 of 1868.

This conclusion is contrary to the view expressed by Ernst Eitel, a prominent Hong Kong historian in the late nineteenth century.⁵⁸⁶ Eitel suggested that MacDonnell's intention was to improve the working of the Hong Kong stamp duty legislation rather than revenue-raising.⁵⁸⁷ As Eitel's book⁵⁸⁸ was first published in 1895, colonial records and other sources may not have been readily available at that time to allow the perspectives that are possible in this study.

At this point in the investigation, it was established that the main driving force for the 1868 amendment was financial and not equity restoration as publicly declared. A further issue in assessing whether the driving force in the amendment was financial, is to ascertain whether the stamp duty changes instigated by the Governor were effective in meeting the identified financial objective.

Since the changes were structural and there was no change of mechanism, the 1868 Ordinance can be classified as a stamp duty amendment. Although the evidence shows that the amendments were principally for revenue enhancement, vertical equity was enhanced as a by-product since reduced *ad valorem* rates with expanded scale steps were incorporated for some instruments. The changes made were extensive and the amendments were comprehensive. The short-term result of the amendments was a stamp revenue increase of 5.5% compared to using the old system.⁵⁸⁹ The increase in revenue fell short of MacDonnell's expectation. The shortfall can be explained by comparing the ideologies behind the British 1853 penny tax reform⁵⁹⁰ implemented by William Gladstone and the Hong Kong 1868 stamp duty amendment directed by MacDonnell. Both changes were effected for revenue enhancement. The penny tax reform can be considered a reform as Gladstone

⁵⁸⁶ G B Endacott stated that students of the history of Hong Kong can hardly avoid familiarity with E J Eitel's *Europe in China: The History of Hong Kong from the Beginning to the Year 1882*. See further G B Endacott, *A Hong Kong History: Europe in China / by E J Eitel – the Man and the Book* (Hong Kong, University of Hong Kong Press 1961).

⁵⁸⁷ E J Eitel, *Europe in China* (first published 1895, Hong Kong, Oxford University Press 1983), 429.

⁵⁸⁸ E J Eitel, *Europe in China* (first published 1895, Hong Kong, Oxford University Press 1983).

⁵⁸⁹ Hong Kong Hansard 3 October 1868. Figures were based on three months comparative results prepared by the Collector of Stamp Duty.

⁵⁹⁰ See Section 2.3.6.

materially altered both the stamp duty structure and stamp duty mechanism to achieve significant financial success.⁵⁹¹ In the 1868 Hong Kong amendment, MacDonnell focused on stamp duty structure and did not consider modifying the stamp duty mechanism. If there had been improvements in collection procedures, counter-evasion measures or the education of Chinese taxpayers, there might have been a better outcome. For example, MacDonnell ignored the Chamber of Commerce's suggestion that the public should be granted a grace period of fourteen days to have documents stamped without imposition of a fine, and insisted that documents had to be stamped before the documents were effective. In hindsight, implementing this recommendation would have greatly decreased the inconvenience of payment and possibly led to improved taxpayer compliance. Gladstone investigated taxpayers' behaviour to detect non-compliance and responded to it, whereas MacDonnell did not. The comparative analysis suggests that in order to achieve revenue enhancement through stamp duty changes, a programme targeting both the stamp duty structure as well as the mechanism was needed. Concentrating on the stamp duty structure alone yielded a sub-optimal result.

The total annual stamp duty revenue raised in 1868 was HK\$101,894 and the cost of collection only HK\$4,286.⁵⁹² Furthermore, even though the revenue collected fell short of his expectation, MacDonnell stated in his 1869 budget speech that the colony's revenue was permanently raised due to the Stamp Ordinance, and the Hong Kong financial position 'began to right itself slowly'.⁵⁹³ This confirms his financial motive.

3.3.2 Governor John Pope Hennessy's arrangements to increase stamp revenue

Ernst Eitel observed that shortly after the first imposition of stamp duties in Hong Kong in 1867, 'with the exception of receipts to be given to foreigners, Chinese tradesmen and merchants disregarded the Ordinance and stamped commercial documents only in cases in which they apprehended the possibility of litigation'.⁵⁹⁴ Governor John Pope Hennessy (in office 1877–1883) was the

⁵⁹¹ Ibid. William Gladstone decreased the tax rate substantially and introduced a new innovative collection mechanism.

⁵⁹² Hong Kong Government, 'Hong Kong Blue Book 1868' (Hong Kong, Hong Kong Government Printer, 1869), 23.

⁵⁹³ Hong Kong Hansard 17 September 1869.

⁵⁹⁴ E J Eitel, *Europe in China* (first published 1895, Hong Kong, Oxford University Press 1983), 427.

first Governor to deal with the Chinese stamp duty evasion problem.⁵⁹⁵ Driven by the desire to increase the yield of the stamp duty, he discovered few, if any, stamp-duty-related prosecutions in the years before he was appointed Governor. He instructed the Hong Kong Magistrates in 1877 to increase prosecutions against the Chinese who had violated the Stamp Duty Ordinance.⁵⁹⁶ Hennessy investigated the reasons for the Chinese taxpayers' non-compliance with the law and responded by prescribing appropriate remedies. The prosecutions he filed against the Chinese traders led to a positive educational outcome; the Chinese community wrote to Hennessy to inform him that they understood the government's determination to enforce the Stamp Duty Ordinance and would comply. However, they asked the Governor to exercise his discretion in not prosecuting any cases involving documents prepared before 1878, to which Hennessy, pragmatically, acceded.⁵⁹⁷

Further, to complement his policy to enhance stamp revenue, Hennessy sanctioned a Chinese Stamp Agency to facilitate the sales of stamps to the Chinese. The agency was not under the direct management of the Hong Kong government. Instead, it was operated as a private business by an ethnic Chinese⁵⁹⁸ selected by the Collector of Stamp Revenue. The agent was allowed to purchase any quantity of adhesive stamps and bring any number of documents to the Stamp Office to be stamped. In the first instance, the agent paid stamp duty as would any other taxpayer,⁵⁹⁹ however, at the end of every three-month period, the total purchases were reported to the government and a discount of 10% was granted to the agent by the Hong Kong Treasury.⁶⁰⁰ The use of stamp distributors resulted in a devaluation of stamps in China during the early Republic of China era.⁶⁰¹ Hennessy did not implement any measures to prevent the Chinese Stamp Agency from selling adhesive stamps at below-face value. Furthermore, no control measures were in place to prevent purchases of

⁵⁹⁵ Speech of His Excellency John Pope Hennessy CMG on Colonial Finances (15 October 1878), CO129/184, 10.

⁵⁹⁶ Ibid.

⁵⁹⁷ Letter from John Pope Hennessy to Henry Herbert (1 March 1878), CO129/181, 198.

⁵⁹⁸ In 1879, the appointed Chinese stamp agent was Un Man Tsoi, a former Chinese clerk working for the Hong Kong government. See Letter from John Pope Hennessy to Michael Hicks Beach (20 May 1879), CO129/184, 421.

⁵⁹⁹ Letter from John Pope Hennessy to Michael Hicks Beach (20 May 1879), CO129/184, 421.

⁶⁰⁰ Ibid 422.

⁶⁰¹ Lixin Rao 饒立新, *Zhongguo Yin Hua Shui Yan Jiu* 中國印花稅研究 [Study on Stamp Duty of China] (Beijing, Zhongguo Shui Wu Chu Ban She 2009), 97; See section 4.2.8.

adhesive stamps from the agency by European businesses, which contradicted the ethos of the establishment of the agency. Compared to China, the main difference was that Hennessy only appointed one agent, which allowed focused supervision and prevented the devaluation of stamps caused by market competition between agencies.

Despite the shortcomings of the Chinese Stamp Agency, in 1877, through the establishment of the Agency as well as the prosecutions filed against the Chinese evading the Stamp Duty Ordinance, stamp duty revenue increased from HK\$103,846 in 1876 to HK\$118,539 in 1877,⁶⁰² representing a 14% increase. This was clear evidence in itself that Hennessy had a financial agenda when he conceived his 1877 stamp duty policies.

Other evidence exemplified Hennessy's primary motive as revenue enhancement. During Hennessy's tenure, and with a growing economy, there was no pressing need for him to intensify the enforcement of the stamp duty to yield more revenue. Yet his stamp duty actions point to revenue enhancement as his intention. This directs attention to the reasons why Hennessy instigated such a policy which could upset the Chinese. Investigation into the reasons behind his conceived financial imperative reveals that his motives were personal, and concerned his desire for preferment. Hennessy had not been knighted after serving as Governor for various British colonies before he took up his governorship in Hong Kong.

Investigating the possible reasons for Hennessy's lack of a knighthood prior to his Hong Kong posting, reveals that the Colonial Office felt he lacked common sense and was administratively inefficient. Indeed, the officials recorded that Hennessy left correspondence from the Colonial Office unattended and mismanaged the finances of all of the colonies that he had governed, and that they must 'watch his proceedings narrowly'.⁶⁰³

In order to remove any impediment to the bestowment of a knighthood, Hennessy was thus eager to demonstrate his management ability, in particular,

⁶⁰² Letter from John Pope Hennessy to Henry Herbert (1 March 1878), CO129/181, 197.

⁶⁰³ G B Endacott, *A History of Hong Kong* (London, Oxford University Press 1958), 170–71.

in the area of financial administration. He sent a handful of letters to the Colonial Office stating his achievements in improving stamp duty revenues.⁶⁰⁴ On 15 October 1878, Hennessy announced in the Hong Kong Legislative Council his plan to reduce taxation for the first time in the history of the colony. In his opinion, this was attributable to his favourable financial policies, in particular the stamp duty policies.⁶⁰⁵ His announcement was unknown beforehand to the Secretary of State for the Colonies.⁶⁰⁶ The Secretary of State rejected the announced policy and sent a telegram instructing Hennessy to make no tax reductions.⁶⁰⁷

Investigation of Hennessy's objectives in 1878 found that equity restoration was important. Hennessy was a firm believer in the principle of equal treatment for all people;⁶⁰⁸ the Europeans should not be accorded preferential treatment and the Chinese should be dealt with likewise. The horizontal tax equity between European and Chinese taxpayers had to be restored. It was unfair to the European taxpayers that they were required to pay a stamp duty for certain instruments whereas their Chinese counterparts ignored the statutory requirements with no consequences. If stamp duty horizontal equity was not restored, in the long run the European taxpayers would show contempt by evading the duties which would potentially lead to a severe revenue drain. In this context, the discussion indicates that the perceived horizontal equity restoration imperative that drove Hennessy's stamp duty policy was ultimately financial in nature with a view to sustaining stamp duty revenue.

Hennessy's reinforcement of the receipt stamp mechanism in furtherance of his financial imperative was again in evidence some eighty years later, during the fiscal years 1956/57 and 1957/58. The Stamp Office had stepped up its prosecution of stamp receipt defaulters, and a total of 29,155 instances were

⁶⁰⁴ For example see Letter from John Pope Hennessy to Henry Herbert (9 October 1877), CO129/179, 208; Letter from John Pope Hennessy to Henry Herbert (4 December 1877), CO129/179, 434; Letter from John Pope Hennessy to Henry Herbert (1 March 1878), CO129/181, 198.

⁶⁰⁵ *Hong Kong Government Gazette*, 'Speech of His Excellency The Governor on Colonial Finances Extracted from the Daily Press, Proceeding of Council on 15 October 1878' (Hong Kong Government 19 October 1878).

⁶⁰⁶ Minutes on the Comparative Return of Stamp Revenue for 1877 and 1878 (17 February 1879), CO129/184, 3.

⁶⁰⁷ Telegram from Michael Hicks Beach to John Pope Hennessy (28 February 1879), CO129/184, 15.

⁶⁰⁸ G B Endacott, *A History of Hong Kong* (London, Oxford University Press 1958), 170.

detected and penalties collected. This was achieved by causing inspectors to carry out frequent investigations to ensure that receipts were properly stamped. Such activities in this regard produced the desired result and made the public more aware of their responsibilities. The result was overwhelming as the sales of receipt stamps were increased by \$188,437 in 1956/57 and by a further of \$106,726 in 1957/58. The total increase of HK\$295,163 is considerable, bearing in mind that stamps cost only HK15¢ each at that time.⁶⁰⁹

After demonstrating the financial nature of Hennessy's actions, this section continues the analysis of lessons to be learned about substantive stamp duty initiatives that could be used to quench financial exigencies.

As discussed in section 3.3.1, altering the stamp duty structure alone might not yield a constructive result, raising the all-important question of how to enhance stamp duty revenue when the financial need arises.

The first administrative official to experiment with stand-alone policy to reinforce the stamp duty mechanism to increase stamp duty revenue was Hennessy.⁶¹⁰ The evidence demonstrates that Hennessy's policies to educate, punish, and at the same time offer convenience to the Chinese taxpayers in the form of the Chinese Stamp Agency were successful in fulfilling his financial objective, showing how much could be achieved by applying coherent policies to reinforce the stamp duty mechanism. Contrasting this with MacDonnell's 1868 amendments⁶¹¹ demonstrates that stand-alone changes to stamp duty structures are unlikely to succeed; successful changes require that stamp duty mechanisms be the central focus. What Hennessy had done also demonstrated that it was possible to achieve successful reform focusing only on stamp duty mechanisms.

Following the development to this point, it can be said that historical investigation of the Hong Kong stamp duty system confirms that it was not

⁶⁰⁹ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1957–58' (Hong Kong, Hong Kong Government Printer 1958), 19.

⁶¹⁰ Geoffrey Robley Sayer, *Hong Kong, 1862–1919: Years of Discretion* (Hong Kong, Hong Kong University Press 1975), 40.

⁶¹¹ See section 3.3.1.

essential to increase duties or add in novel heads of charge at all times to achieve desired revenue increments. Revenue enhancement could be achieved by enforcing and/or strengthening the existing mechanisms unaided by other measures.

3.3.3 Hong Kong's first revenue-driven comprehensive stamp duty reform

Governor Sir George Bowen (in office 1883–1885) informed the 1884 Legislative Council during his opening speech that he would 'consolidate and amend the law relating to stamp duties'.⁶¹² Although the kind of statutory consolidation envisaged would have been extremely useful and was an appropriate object in itself, Bowen did not explicitly state the objective of the exercise. Attorney General Edward O'Malley (in office 1879–1889) specified the need to readjust the incidence of certain duties that were inequitably distributed as another reason for the proposal.⁶¹³ There was no mention of any revenue objective during the legislative process for the proposed Hong Kong Stamp Ordinance 1884.⁶¹⁴ Nevertheless, analysis of the historical evidence reveals Bowen did indeed have a dominant revenue objective in mind when he planned the 1884 stamp legislation, driven by the need to improve the infrastructure of Hong Kong.

When Bowen took over, Hong Kong was a fine city in terms of its infrastructure. There were gaslights on streets, reservoirs, schools, botanic gardens, theatres, museums and public libraries.⁶¹⁵ Hong Kong was then the British Empire's third most important seaport after London and Liverpool.⁶¹⁶ Nonetheless, Bowen faced a dire problem of Hong Kong's unsanitary conditions. The Colonial Office appointed Osbert Chadwick in 1881 to conduct a full enquiry into the sanitary condition of Hong Kong. Chadwick submitted his report with numerous suggestions in 1882.⁶¹⁷ The adoption of these recommendations, in which the Colonial Office expected no delay, was left to Bowen. Chadwick's

⁶¹² Hong Kong Hansard 28 February 1884.

⁶¹³ Letter from George Bowen to Edward Stanley (16 May 1884), CO129/216, 115.

⁶¹⁴ No 15 of 1884.

⁶¹⁵ Gwenneth Stokes, *Hong Kong in History* (Hong Kong, Hong Kong Government Printer 1965), 65.

⁶¹⁶ George Bowen, *Thirty Years of Colonial : A Selection from the Despatches and Letters of Sir George Ferguson Bowen* (Stanley Lane-Poole ed, London, Longmans 1889), vol 2, 393; J P Floru, *Heavens on Earth: How to Create Mass Prosperity* (London, Biteback Publishing Ltd 2013), ch 4, 4.

⁶¹⁷ G B Endacott, *A History of Hong Kong* (London, Oxford University Press 1958), 187–88.

recommendations dealing with drainage, water supply and similar large public works were to be carried out at great expense.⁶¹⁸

The evidence shows that Bowen's real objectives in introducing the Hong Kong Stamp Ordinance 1884⁶¹⁹ were threefold:

First, the timing of the 1884 legislation indicated strongly that it was indeed a direct response to the financial demands highlighted in the Chadwick report.

Second, evidence arises from Bowen's disclosure that the colony was in need of money during the first session of the 1884 Legislative Council meeting. He stressed the need to obtain a loan⁶²⁰ 'not much exceeding the revenue of a single year' to finance those 'strong and complete measures of sanitation' foreshadowed by the Chadwick report as so necessary 'for the immediate benefit of the public health' as well as to carry out several other urgent public works.⁶²¹

Third, Bowen summed up his view on the role of stamp duty in his Legislative Council closing speech delivered in 1886.⁶²² He pronounced that the best means for Hong Kong to raise extra revenue to defray loan interest was by an increase of stamp duty.

Given Bowen's three objectives, the 1884 stamp duty changes instigated as a consequence of the Chadwick report on Hong Kong's sanitary conditions reflected a financial imperative. It can be convincingly inferred that the 1884 stamp duty changes were revenue driven despite the Hong Kong government not disclosing this revenue objective during the entire legislative process.

⁶¹⁸ *Hong Kong Government Gazette*, 'Colonial Office Despatches on Sanitation and Education, Government Notification No 74' (Hong Kong Government 3 March 1883); G B Endacott, *A History of Hong Kong* (London, Oxford University Press 1958), 202.

⁶¹⁹ No 15 of 1884.

⁶²⁰ Eventually, the Secretary of States for the Colonies gave approval and allowed the colony to borrow up to one million dollars. See *Hong Kong Sessional Papers* 2 February 1886, 'Despatch Respecting the Proposed Loan' paper 13, 83; 1886 Loan Ordinance, No 11 of 1886.

⁶²¹ Hong Kong Hansard 28 February 1884, 2.

⁶²² Hong Kong Hansard 21 May 1886, 75.

The Hong Kong Stamp Ordinance 1884 was in force from 1 April 1885.⁶²³ The following Hong Kong stamp duty revenue figures were extracted from historical publications:

Table 3.2: **Stamp revenues, 1884–1888**

Year (Calendar year)	Annual stamp duty collected (HK\$)
1884	151,495 ^a
1885	145,582 ^b
1886	176,001 ^c
1887	184,991 ^d
1888	205,041 ^e

^a *Hong Kong Government Gazette*, 10 January 1885.

^b *Hong Kong Government Gazette*, 9 January 1886.

^c *Hong Kong Government Gazette*, 8 January 1887.

^d *Hong Kong Government Gazette*, 7 January 1888.

^e *Hong Kong Government Gazette*, 12 January 1889.

Despite evidence showing the clear financial imperative, ie to raise money, the stamp revenue initially dropped slightly in the year 1885, before increasing in subsequent years. A likely explanation for the revenue decline was that the Sino-French war broke out in August 1884 and detrimentally influenced trade and commerce in Hong Kong, and consequently the stamp duty revenue, which had most of its lucrative heads of charge associated with business transactions. When the war ceased in the latter part of 1885, the revenue effect of the 1884 reform was subsequently observed during 1886–1888 when stamp duty revenue rose steadily without any other revenue-driven amendment being enacted. The revenue rose by 35% over the five year period. From the data it can be concluded that the implementation of the Hong Kong Stamp Ordinance 1884 was successful in generating more revenue. In a way, the data also serves as further evidence that the 1884 Hong Kong stamp duty reform had a principal financial agenda.

⁶²³ The 1884 Hong Kong Stamp Ordinance repealed the 1866 Hong Kong Stamp Ordinance as well as the 1868 Hong Kong Stamp Amendment Ordinance, together with the related Governors' Orders that had been promulgated.

After discerning the key financial aim behind the 1884 Stamp Ordinance, this section moves on to examine the measures initiated by the Hong Kong government to effectively attain the revenue objective.

The investigation reveals valuable lessons relating to the stamp duty revenue enhancement procedures. At the outset, the Hong Kong government presented the 1884 changes to the stamp duty system as an exercise to meet two distinct administrative imperatives: simplification, convenience and equity restoration through reinstatement of stamp duty vertical equity. In the following paragraphs, these imperatives are individually discussed in the context of the 1884 stamp duty law.

1. Simplification

In general, simplification means to decrease complexity. The complexity of a stamp duty system is illustrated by the sum of stamp duty compliance costs. Such costs consist of those incurred by taxpayers as well as by government. Taxpayers' costs include expenditures of time and money to comprehend the stamp duty law, to consult experts and to respond to the Stamp Office's investigations. The government's costs are the stamp duty administrative expenditures. The more complex the stamp duty system, the higher the compliance costs associated with it.⁶²⁴ By reducing the compliance costs of taxpayers, a higher level of voluntary compliance could be anticipated. From the perspective of the Stamp Duty Office, simplifying the stamp duty law enhanced its surplus from stamp duty collection.

The 1884 simplification of the stamp duty tax mechanism was accomplished by three techniques. First, certain sections in the legislation deemed unnecessary, such as the definition of the term 'Governor', were deleted.

Second, various dispersed sections were grouped into one place for clarity. For example, sections 7, 10, 12, 14 and 27 of the Hong Kong Stamp Ordinance

⁶²⁴ William G Gale and Janet Holzblatt, 'The Role of Administrative Issues in Tax Reform: Simplicity, Compliance and Administration' (Tax Reform for the Millennium at James A Baker III Institute for Public Policy, Rice University, November 1998), 3. The conference paper provides an excellent summary and analysis of issues relating to tax avoidance, evasion and administration.

1866,⁶²⁵ which referred to the administration of penalties, were grouped under sections 6 and 7 of the Hong Kong Stamp Ordinance 1884.⁶²⁶

Third, the language was simplified. For instance, the lines used to describe the calculation of stamp duty penalties were reduced from thirty-eight in 1866 to twenty-four in 1884. This was mainly achieved by doing away with the complicated section using HK\$50 as a reference point to calculate the applicable penalties.⁶²⁷

As regards the stamp duty structure it can be concluded that the 1884 simplification was achieved by reducing the steps in the *ad valorem* rate scale and by promoting the uniformity of tax rates across chargeable instruments. This usually took the form of superseding the previous multi-step *ad valorem* rate scale by introducing single step *ad valorem* rates (cumulative standard rate basis)⁶²⁸ to the main chargeable instruments.⁶²⁹ However, by analysing the new rates in the context of the old rates, it is clear that simplification did not necessarily involve a reduction in the duties collected.

The 1884 reform also simplified the stamp duty structure by arranging the heads of charge in alphabetical order. This was intended to improve the comprehensibility of the schedule and make it easier for Hong Kong taxpayers who understood English, to check whether certain instruments were taxable. By appraising the stamp duty law in Britain, it can be concluded that the stamp duty simplification ideologies adopted in Hong Kong in 1884 had their roots in the

⁶²⁵ No 12 of 1866.

⁶²⁶ No 15 of 1884.

⁶²⁷ See section 2.3.8.

⁶²⁸ See section 2.3.3; Hong Kong Stamp Ordinance, No 12 of 1866, sch; Hong Kong Stamp Ordinance, No 15 of 1884, sch.

⁶²⁹ Hong Kong Stamp Ordinance, No 15 of 1884, sch. For charter parties, there was a revision of the previous *ad valorem* rate augmented based on the ships' tonnages to simply, HK10¢ for every HK\$100 or part thereof. In other words, the previous six-step *ad valorem* (cumulative standard rate basis) rate was replaced by a single step *ad valorem* (cumulative standard rate basis) rate. For probates and letters of administration, conveyances and leases at a premium the *ad valorem* rate was adjusted to HK10¢ for every HK\$100 or part thereof. In other words, the previous multi-steps *ad valorem* (cumulative standard rate basis) rate was replaced by a single step *ad valorem* (cumulative standard rate basis) rate. There was also considerable revision made to the *ad valorem* rate for leases at a rent. The previous seven-step *ad valorem* (standard rate basis) rate was replaced by a single step *ad valorem* (cumulative standard rate basis) rate. For mortgages, the previous multi-steps *ad valorem* (cumulative standard rate basis) rate was replaced by a single step *ad valorem* (cumulative standard rate basis) rate.

British Stamp Act 1870.⁶³⁰ Dowell remarked: 'Before the simplification effected in 1870, the law on this subject (British stamp duty) was complicated and confusing. It is now well-arranged, easy to find and within the comprehension of the most moderate intellect.'⁶³¹ In support of this conclusion, the British legislature arranged the heads of charge in alphabetical order for the first time in 1870. The Hong Kong government imitated this practice in 1884.

2. Convenience

Besides effecting simplification, the evidence demonstrates that the 1884 Hong Kong stamp duty reform aimed to offer taxpayers greater convenience,⁶³² both locational and procedural.

The new power granted to the Governor to set up subsidiary Stamp Offices⁶³³ offered taxpayers locational convenience in purchasing adhesive stamps as well as presenting the documents for stamping. In the 1880s, Hong Kong consisted of the Hong Kong Island and the Kowloon Peninsula, which constituted a total area of only 32.5 square miles.⁶³⁴ Moreover, the large mountainous area was uninhabited. Setting up even a few subsidiary Stamp Offices would be enough to offer great convenience to the public. With this new law, the role of the privately run stamp distributor could be phased out.

The new measure to allow agreements by letters and documents executed externally to Hong Kong to be stamped after execution,⁶³⁵ also offered taxpayers more procedural convenience in complying with the law. It was more sensible for taxpayers to sign the documents after stamping to prevent the ensuing difficulties of seeking refunds for spoiled stamps in cases where agreements needed to be re-drafted before execution. This was the first time the Hong Kong law allowed instruments to be stamped after their execution.

3. Equity restoration

⁶³⁰ 33 & 34 Vict c 97.

⁶³¹ Stephen Dowell, *A History of Taxation and Taxes in England 4 vols* (first published 1884, London, Frank Cass & Co 1965), vol 3, 306.

⁶³² See also section 2.3.6.

⁶³³ Hong Kong Stamp Ordinance, No 15 of 1884, s 2.

⁶³⁴ G B Endacott, *Government and People in Hong Kong, 1841-1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 4.

⁶³⁵ Hong Kong Stamp Ordinance No 15 of 1884, s 10(1).

Bowen specifically remarked in his report to the Colonial Office that the tax rates on bills of exchange were inequitably distributed. Accordingly, the Hong Kong Stamp Ordinance 1884 had instigated a complete rearrangement of the related tax structures. For this reason, it was also deemed necessary to introduce more chargeable instruments to compensate for the loss of revenue and restore revenue neutrality.⁶³⁶ The new chargeable instruments introduced were attested copies, average statements,⁶³⁷ declarations of trust,⁶³⁸ lease duplicates, servant security bonds,⁶³⁹ settlements,⁶⁴⁰ policies for life insurance, policies for fire insurance, general letters of hypothecation and notes of protest for bills of exchange.^{641 642} As with MacDonnell's strategic ploy in 1867,⁶⁴³ this use of an equity restoration ideology was perhaps peculiar to the stamp duty regime.

The 1884 Stamp Ordinance restored vertical equity to bills of exchange by replacing the previous three-step rate scale with a more complicated ten-step configuration.⁶⁴⁴ Comparing the new rates with the old rates, it is apparent that the restoration of stamp duty equity did not necessarily involve a reduction of the overall duties collected from bills of exchange.

This also demonstrates that the attempts to make stamp duty fairer conflicted with the notion of making stamp duty simpler. No doubt, the stamp duty system should be simple and fair but the entailing policies to achieve the two outcomes were headed in opposite directions. In this case, the Hong Kong government permitted complexity in order to achieve equity.

⁶³⁶ Letter from George Bowen to Edward Stanley (16 May 1884), CO129/216, 115.

⁶³⁷ Average statements were documents that stated the amount owed by the owners of a ship or the goods the ship carried and the amount owed by an insurance company when they shared the cost of any damages or losses.

⁶³⁸ Declarations of trust were statements made by the holders of a piece of property that the property was being held for the benefits of other persons.

⁶³⁹ See section 3.4.1.

⁶⁴⁰ Settlements were documents on the resolutions between disputing parties about a legal case reached before or after court actions.

⁶⁴¹ Bills of exchange were documents that the drawers made obligations that the drawees should pay the payees a specified sum of money. Protests of bill of exchange were documents prepared for the non-receipt of the bills of exchange or refusal to pay them.

⁶⁴² Hong Kong Stamp Ordinance, No 15 of 1884, sch.

⁶⁴³ See section 3.3.1.

⁶⁴⁴ Ibid. Bills of exchange were given a new *ad valorem* (standard rate basis) with ten-steps. A table of charge ranging from HK2¢ for transaction values over HK\$10, to HK\$3 for over HK\$10,000, was introduced to replace the previous three-step scale.

The 1884 stamp duty reform also restored equity by creating a new category of bills of exchange on demand and charged at a very low fixed rate.⁶⁴⁵ George Phillippo, the previous Attorney General (in office 1869–1879), had opposed such a scheme in 1877. Based on his experience, Chinese taxpayers would inevitably classify bills as payable on demand even though they were only payable after a period of time, in order to be taxed at a lower rate.⁶⁴⁶ This new distinction, however, generated an opportunity to avoid tax. If the government wished to consider the control of resultant tax avoidance, the creation of complex legislation was inevitable. To a certain degree, the government restored tax equity so as to limit the propensity for tax evasion.⁶⁴⁷ Taxpayers were more likely to evade tax when they felt that the tax system was inequitable and perceived that others were reaping greater benefit than they were. The analysis attests that it was ineffectual to introduce any tax law designed for equity restoration if it would also give rise to tax evasion. Another pitfall identified from the discussion was that it would be ineffectual to restore equity by introducing excessively complicated legislation. Complexity itself invited evasion.

It is submitted that stamp duty law designed to satisfy any of these administrative and equity imperatives individually might not enhance revenue. In fact, as discussed above, only the stamp duty simplification exercise had a slight linkage to revenue enhancement. Offering vertical equity might even have a revenue-contraction effect. Further, while examining the Stamp Amendment Ordinance 1895,⁶⁴⁸ it is demonstrable that the extension of convenience to stamp duty payers would not necessarily enhance revenue.⁶⁴⁹ It can be said that law, designed to meet any of these fiscal imperatives in isolation, would only satisfy the stamp duty system sustainability imperative but not the demand for revenue.⁶⁵⁰

⁶⁴⁵ Hong Kong Stamp Ordinance No 15 of 1884, sch. Bills of exchange on demand taxed at a low fixed rate at HK2¢ regardless of the transaction values instead of the *ad valorem* rate.

⁶⁴⁶ Letter from John Pope Hennessy to Henry Herbert (21 August 1877), CO129/178, 586.

⁶⁴⁷ Erich Kirchler, *The Economic Psychology of Tax Behaviour* (New York, Cambridge University Press 2007), 82.

⁶⁴⁸ No 26 of 1895.

⁶⁴⁹ See section 4.2.1; Hong Kong Stamp Amendment Ordinance, No 26 of 1895.

⁶⁵⁰ See section 4.2.1.

Yet the 1884 Hong Kong stamp duty reform was considered a great financial success. As such, the evidence confirms the principle that serving the administrative needs of simplification and offering convenience to taxpayers, as well as simultaneously satisfying the requirements of vertical equity, would result in a positive financial outcome.

In comparing the Stamp Ordinance 1884 with the previous version that displayed an unproductive revenue yield, it is clear that the 1884 version was a comprehensive reform with extensive changes made to both the stamp duty structure as well as the mechanism. The main theme of the reform was *simplification through consolidation*. The auxiliary themes were the *offering of convenience* and *equity restoration*. These three themes worked synergistically to deliver an overall package that was effective in increasing stamp duty revenue.

The Hong Kong government chose to implement the aforementioned administrative and equity imperatives concurrently, under the one piece of legislation. With hindsight, this provides further evidence that the main reason for the introduction of the 1884 Hong Kong stamp duty reform was unequivocally for the principal financial imperative, rather than the secondary demand to enhance system sustainability.

3.3.4 Meeting revenue exigency caused by cessation of opium by dealing with both stamp duty structure and mechanism

The stamp duty amendment of 1909⁶⁵¹ demonstrates that the need for revenue continued to be an important imperative in shaping the Hong Kong stamp duty law in the first decade of the twentieth century. At the turn of the twentieth century, the British home government discouraged opium trading in its colonies. Nonetheless, the taxes and related charges imposed on opium-related activities were hitherto, a significant source of revenue to the Hong Kong government.⁶⁵² Unquestionably, the Hong Kong government experienced financial exigency in 1909 due to the change in the British government's policy attitude towards opium.

⁶⁵¹ Hong Kong Stamp Amendment Ordinance, No 19 of 1909.

⁶⁵² See section 3.4.2.

The examination of the Hong Kong Stamp Amendment Ordinance 1909⁶⁵³ finds that it was enacted for the sole purpose of enhancing revenue by the imposition of higher duties on receipts and probates to counter the potential loss of revenue from the cessation of the opium trade. The legislation came into force on 1 January 1910. It was an immediate financial success as the aim of Governor Sir Frederick Lugard (in office 1907–1912), to increase the level of stamp revenue, was achieved. Stamp revenue collections increased from HK\$626,023⁶⁵⁴ in the year 1909 to HK\$753,836⁶⁵⁵ in the year 1910.

An analysis of the fundamentals that enabled Lugard's stamp duty amendment to be financially successful, found that before the 1909 amendments, receipts for less than HK\$25 did not require a stamp, but after the amendments receipts for HK\$10 and upwards would bear a five cent stamp. The stamp duty rates on probate were also doubled and in Lugard's opinion, this was still 'small in comparison with like duties charged in other countries'.⁶⁵⁶

The colonial government also enhanced the tax mechanism to strengthen the collection of probate stamp duties by imposing penalties for delayed probate applications.⁶⁵⁷ No doubt, the purpose was to induce early application for probate to prevent evasion of duties and more importantly, to inform the Chinese that probate was compulsory and not voluntary. Generally, stamp duties on probate would be charged at three times the original rates if the probates were not delivered to the Stamp Office within one year from the death of the deceased.⁶⁵⁸

To sum up, the success of the measure was attributable to the fact that stamp duties on receipts and probates were essentially made compulsory rather than voluntary, although whether the Hong Kong stamp duty system as a whole was compulsory or voluntary, was still ambiguous in 1909.

⁶⁵³ No 19 of 1909.

⁶⁵⁴ Hong Kong Government, 'Hong Kong Blue Book 1909' (Hong Kong, Hong Kong Government Printer, 1910), c2.

⁶⁵⁵ Hong Kong Government, 'Hong Kong Blue Book 1910' (Hong Kong, Hong Kong Government Printer, 1911), c2.

⁶⁵⁶ Hong Kong Hansard 1 July 1909, 64.

⁶⁵⁷ Hong Kong Stamp Amendment Ordinance, No 44 of 1909, s 2.

⁶⁵⁸ Ibid.

The evidence reinforces the finding that financial imperatives were likely to be reinforced by stamp duty legal changes driving both the stamp duty mechanisms as well as the structures, simultaneously.

3.3.5 Meeting revenue demand in Hong Kong's most disastrous year by dealing with the stamp duty structure

The Hong Kong stamp duty amendments of 1894 reflected the colony's severe exigencies at that time, giving rise to the predominant need to significantly increase revenue.

Governor Sir William Robinson (in office 1891–1898), described the year 1894 as the 'saddest and the most disastrous in the records of history of Hong Kong'.⁶⁵⁹ The dismay that marked the year sprang from a number of factors all severely damaging the Hong Kong economy. A bubonic plague attacked the colony, the calamity accounting for more than 2,500 victims and causing an unprecedented exodus of more than 50,000 Chinese, affecting all businesses in Hong Kong. A rapid fall in silver prices caused the depreciation of the silver-based Hong Kong currency. The large devaluation of the Hong Kong currency was not only detrimental to businesses but also resulted in a heavy financial burden on the government in meeting the demand for a 20–35% increase in salaries.⁶⁶⁰ The First Sino-Japanese war of 1894–95 affected the economic life of Hong Kong adversely.⁶⁶¹ Numerous typhoons occurred in Hong Kong in 1894, causing severe damage.⁶⁶²

The combined effect of these unanticipated circumstances increased the government's expenditures and decreased the government's revenues, triggering financial stress in 1894. In his 1894 speech giving the financial estimates for 1895, Robinson forecasted a deficit of HK\$67,231.⁶⁶³ The need for revenue predisposed the Governor to increase taxation. Robinson's first alternative was to increase stamp duty with an expected yield of HK\$40,000, partially defraying the 1895 estimated deficit.⁶⁶⁴ The remaining deficit would be

⁶⁵⁹ Hong Kong Hansard 28 November 1894, 2.

⁶⁶⁰ G B Endacott, *Government and People in Hong Kong, 1841–1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 117.

⁶⁶¹ G B Endacott, *A History of Hong Kong* (London, Oxford University Press 1958), 253.

⁶⁶² Hong Kong Hansard 28 November 1894, 2.

⁶⁶³ *Ibid.*

⁶⁶⁴ *Ibid.*

covered by an increase in pawnbroker licence fees and spirit licence fees. Robinson also held private discussions with the unofficial members of the Legislative Council, and subsequently stated that they were 'not averse to still further taxation by way of an increase in rates' if the other measures he took to increase revenue were not adequate.⁶⁶⁵

Against this background the investigation of historical records and circumstances establishes a financial imperative as the dominant driving force for the enactment of the Hong Kong stamp duty legislation in 1894.

Having regard to the methods used to achieve this end, it is noteworthy that before the 1894 stamp duty amendment, stamp duty changes based only on stamp duty structures yielded a poor financial outcome.⁶⁶⁶ Indeed, changes made only to the stamp duty structures, without dealing with the mechanisms, continued to yield poor financial results after 1894.⁶⁶⁷

The Hong Kong Stamp Amendment Ordinance 1894⁶⁶⁸ warranted particular attention as the amendments made to stamp duty structure alone, were able to achieve the desired result. Thus the aim of the 1894 stamp duty amendment investigation was to gain further understanding of the factors that enabled structural amendments effected by the 1894 Ordinance to successfully achieve the revenue objective.

The Hong Kong Stamp Amendment Ordinance 1894⁶⁶⁹ introduced three new chargeable instruments. First, it imposed a HK2¢ stamp on letters for appointing proxies to vote at meetings.⁶⁷⁰ Such letters were classified as powers of attorney.⁶⁷¹ Second, it imposed a HK\$1 stamp on affidavits.⁶⁷² Third, it imposed a duty on the surrender of a lease with the same tax rate as for execution of the lease.

⁶⁶⁵ Ibid.

⁶⁶⁶ See for example section 3.3.1.

⁶⁶⁷ See for example section 3.3.6.

⁶⁶⁸ No 13 of 1894.

⁶⁶⁹ Ibid.

⁶⁷⁰ Hong Kong Stamp Amendment Ordinance, No 13 of 1894, s 4.

⁶⁷¹ Letter from William Robinson to George Robinson (4 January 1895), CO129/266, 5.

⁶⁷² Hong Kong Stamp Amendment Ordinance, No 13 of 1894, s 6.

The 1894 Ordinance also significantly increased the tax rate for insurance policies from HK10¢ to HK25¢,⁶⁷³ and the duties for probates from 1% to 2%, and from 1% to 3% for estates with net values exceeding HK\$10,000 and HK\$20,000, respectively.⁶⁷⁴ In percentage terms, these increases were considerable.

Thus, amendments to stamp duty structures to achieve the financial aim, increased stamp duty revenue from HK\$188,240 in 1894 to HK\$229,168 in 1895,⁶⁷⁵ representing an increase of HK\$40,928 (22%) for the year. The 1894 stamp duty amendment was considered a success as the increment exceeded Robinson's target of HK\$40,000.

Because the revenue collection from the three newly added chargeable instruments was negligible,⁶⁷⁶ it can be concluded that the revenue increase was directly attributable to the upsurge in tax rates for probates and insurance policies.

Four factors have been identified as contributing to the immense financial success of the Ordinance by solely amending the duty rates and deductions of stamp duty structures.

1. Significant tax rate increments matched to social and economic circumstances

Robinson said that the year 1894 was the worst year in the history of Hong Kong filled with unfortunate events.⁶⁷⁷ The economy in 1895 was still affected as 'Hong Kong was boycotted in every direction'⁶⁷⁸ and there were still plague cases in 1895–96.⁶⁷⁹ It can be inferred from Robinson's oral history account that he realised that it would be highly ineffective to raise the tax rates for instruments that were linked to trade and commerce for additional revenue. For example, raising the rates for bills of exchange during this period might have

⁶⁷³ Ibid s 5.

⁶⁷⁴ Ibid.

⁶⁷⁵ Hong Kong Government, 'Hong Kong Blue Book 1884' (Hong Kong, Hong Kong Government Printer, 1885), c6.

⁶⁷⁶ *Hong Kong Government Gazette*, 'Stamp Revenue Return for Years 1894 and 1895, Government Notification No 8' (Hong Kong Government 11 January 1896). The 1895 stamp duties collected on proxies, affidavits and surrenders of a lease, were HK\$9, HK\$120 and HK\$0, respectively.

⁶⁷⁷ Hong Kong Hansard 28 November 1894, 2.

⁶⁷⁸ Ibid.

⁶⁷⁹ G B Endacott, *A History of Hong Kong* (London, Oxford University Press 1958), 217.

been fruitless as the underlying transactions to support the tax decreased substantially. Sadly, in the worst plague period for Hong Kong, the death rate was high and it would be revenue effective to attach higher stamp duty rates to probates based on the value of the deceased estates.

With the advent of these natural disasters, typhoons and the plague in 1894, an awareness of the importance of insurance increased. Robinson understood this and chose to increase the stamp duty rate for insurance policies. Whilst commercial activities decreased, insurance policy sales increased rapidly.

2. Increment capacity that could be exploited without inciting uproar

The increment capacity was used to identify suitable instruments marked for significant tax rate increase. For instance, insurance policies were selected as they were only taxed at a fixed rate of HK10¢, whereas similar instruments of agreement were taxed at a fixed rate of HK50¢ under the 1886 Hong Kong Stamp Ordinance before the amendments.

3. Equity restoration performed on selected instruments for significant tax rate increments

The 1894 Ordinance authorised deductions to be made from the value of the deceased estates for probate stamps.⁶⁸⁰ In all preceding Hong Kong stamp legislation, approval for deductions was not given under any head of charge. This was the first time the concept of deduction was used in Hong Kong stamp duty law to arrive at the tax base. Mortgaged debts and personal debts were deductible from the values of the estate for stamp purposes.⁶⁸¹ The stamp duty system recognised the costs of the estates and only imposed tax on the net values of the estates.

In arriving at the net estate values, vertical equity was re-established. The doctrine incorporated into the stamp duty system was taken from British legislation. The relevant British Act was the Customs and Inland Revenue Act 1881, which included a similar section⁶⁸² with the same effect. The benefit of doing so was that the doctrines were tested and proven viable in Britain before being put into force in Hong Kong. This assured sustainability of the law. The

⁶⁸⁰ Letter from William Robinson to George Robinson (4 January 1895), CO129/266, 5.

⁶⁸¹ Hong Kong Stamp Amendment Ordinance, No 13 of 1894, s 2(1) & (2).

⁶⁸² Customs and Inland Revenue Act 1881 (44 Vict c 12), s 28.

restoration of equity for probates was instrumental in inducing the taxpayer to perceive the tax as fair and thus promoting compliance.

4. Recognition of cultural customs and sensitivities.

When comparing the 1881 British Customs and Inland Revenue Act with the Hong Kong Stamp Ordinance 1894, the British Act allowed funeral expenses to be deductible against the estates whereas the Hong Kong Ordinance did not. The Hong Kong Attorney General, William Goodman explained that it was 'undesirable in the circumstances of this colony' to permit such deductions.⁶⁸³

The Attorney General's viewpoint showed that the government was aware of the Chinese Confucian traditions, which emphasised respect for one's parents as the greatest virtue. The eldest son of every family was obliged to give his parents a proper funeral befitting the deceased's status. Without a proper funeral, the family would be disgraced and the deceased could not be at peace.⁶⁸⁴ It was against the Chinese ethos of filial piety that expenditures for a funeral were deducted for tax purposes against the deceased's estate. This would create an impression that the deceased paid for his own funeral instead of the son.

This development of the stamp duty shows that in the late nineteenth century in Hong Kong, tax laws were adopted from Britain, but in order to further enhance the sustainability and acceptability of such adopted doctrines, the Hong Kong legislator performed adaptability studies to attune the law to local customs. In the example above, this policy was to ensure the Chinese would not be discouraged from paying stamp duty on probates due to customary matters.

Contrasting with the American Stamp Act 1765 which led to the American Independence War, the Hong Kong initiative showed the importance of recognising local customs and traditions.⁶⁸⁵ The British government failed to recognise the individual liberty of the American people in applying the principles of Magna Carta in America, whereas the Hong Kong government paid attention

⁶⁸³ Letter from William Robinson to George Robinson (4 January 1895), CO129/266, 5.

⁶⁸⁴ Dorothy Perkins, *Encyclopedia of China: The Essential Reference to China, Its History and Culture* (New York, Round Table Press 1999), 171.

⁶⁸⁵ See section 2.4.

to Chinese customs founded in Confucian traditions when formulating the new tax law.

The analysis demonstrates that in order to ensure that structural stamp duty amendments achieved the revenue objective it was of paramount importance to select the instruments prudently for significant tax increments by reflecting the accompanying social and economic circumstances. Further the ability of the populace to bear the incremental imposts had to be considered. Another contributory measure was the restoration of equity for the selected instrument in inducing the taxpayer to perceive the tax as fair, thus promoting compliance. Lastly, it was important to observe local customs and operations to avoid barriers to revenue collection.

3.3.6 Law that failed to double stamp duty revenue as projected

At the turn of the twentieth century, the colony's infrastructure needs gave rise to significant public debt and a budgetary deficit, providing a clear motivation for revenue raising through taxation. It suggests that a financial imperative was the motivational underpinning of further changes to Hong Kong's stamp duty regime.

In 1902, Hong Kong was in deficit due to the need to extensively increase public works and for land resumption compensation to end the annual recurrence of plague in the colony.⁶⁸⁶ Governor Sir Henry Blake (in office 1898–1903) informed the Legislative Council that in order to service the loan to quench the deficit and provide for the ensuing interest expenditures, stamp duty had to be increased to provide additional revenue of HK\$84,000 per annum.⁶⁸⁷ In his stamp duty legislative policy, driven by financial imperatives, the question arose whether doubling or trebling the stamp duty rates across the board would generate double or treble the revenue. The Hong Kong Stamp Amendment Ordinance 1902⁶⁸⁸ provided an opportunity to gauge the financial result of such arrangement.

⁶⁸⁶ Hong Kong Hansard 9 October 1902, 55–56.

⁶⁸⁷ Hong Kong Hansard 9 October 1902, 56.

⁶⁸⁸ No 38 of 1902.

The Hong Kong Stamp Amendment Ordinance 1902,⁶⁸⁹ which doubled or trebled the tax rates for most heads of charge, came into operation on 1 January 1903. It was a financial failure. The total stamp revenue collected in the year 1903 was less than in the previous year, 1902.⁶⁹⁰ This failure was contrary to the belief that revenue might at least double. A survey of the *Hong Kong Hansard* as well as the Governor's correspondence with the Colonial Office revealed the Hong Kong government did not discuss or give any reasons for the failure. By examining the background, however, the failure may be seen to be attributable to two factors.

First, certain vital contributors to stamp revenue such as conveyances, leases, policies of insurance and probates were left out of the increment exercise.

Second, and more significantly, the tax rates were raised drastically overnight with certain instruments being taxed at unreasonable levels.⁶⁹¹ This invited fiscal disobedience. Generally, the payment of Hong Kong stamp duty in 1902 was voluntary subject only to some exceptions. In other words the only sanction was a penalty that had to be paid when unstamped instruments were admitted for legal proceedings. Taxpayers would be tempted to disobey the stamp requirement if they did not intend to seek legal protection on the concluded instruments and such instruments also did not require statutory registration. This temptation would be intensified as the tax rates rose to relatively high levels and caused loss of revenue. The effect in Hong Kong at that time would have been substantial as the Chinese, being the majority population, still shunned British legal proceedings due to ignorance and unfamiliarity.

The discussion demonstrates that a harsh revenue-enhancing amendment targeted at the stamp duty structures, without insightful consideration of the possible responses by the taxpaying public, was unlikely to succeed in fulfilling the financial imperative. That had already been proven once before under MacDonnell's 1868 stamp duty amendment.

⁶⁸⁹ Ibid.

⁶⁹⁰ The stamp revenues in 1902 and 1903 were HK\$517,238 and HK\$516,357 respectively. See *Hong Kong Government Gazette*, 'Statement of Stamp Revenue, Government Notification No 39' (Hong Kong Government 23 January 1904).

⁶⁹¹ It was unreasonable as compared to the prevailing duty rates in Britain at that time. See section 4.3.6.

3.3.7 Law that efficaciously doubled stamp revenue

The reforms and amendments of the early twentieth century were equally driven by financial considerations. World War I broke out in 1914. However, the war did not generate a financial imperative for Hong Kong as the Hong Kong economy did not suffer immensely.⁶⁹² Ironically, Hong Kong found itself in severe financial difficulties after World War I. Following four years of not carrying out public works due to the war, many works of an urgent nature had been in abeyance and it was necessary to proceed with them *en masse*.⁶⁹³ To compound the problem, the revenue derived from the opium monopoly fell markedly from around HK\$8 million annually during the war to less than HK\$5 million in 1920.⁶⁹⁴ This was due to the adopted policy of reducing opium smoking in the colony.⁶⁹⁵ Under these circumstances, Governor Sir Reginald Stubbs (in office 1919–1925), introduced the Hong Kong Stamp Ordinance 1921⁶⁹⁶ which aimed to raise additional revenue of HK\$1 million,⁶⁹⁷ an anticipated 70% increase over the 1920 stamp revenue.⁶⁹⁸ The officer in charge of drafting the legislation was Attorney General Joseph Kemp (in office 1915–1930).⁶⁹⁹

The 1921 legislation was a comprehensive stamp duty reform that introduced many changes to the stamp duty structure as well as the mechanism to enhance revenue. The following table shows the Hong Kong stamp duty revenue figures before and after the reform:

⁶⁹² In fact there were rapid developments of Chinese shipping as well as banking businesses in Hong Kong, as their British counterparts were preoccupied with the confrontation. See Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 87.

⁶⁹³ Hong Kong Hansard 25 April 1921, 45.

⁶⁹⁴ *Ibid.*

⁶⁹⁵ See section 3.4.2.

⁶⁹⁶ No 8 of 1921.

⁶⁹⁷ Hong Kong Hansard 7 April 1921, 21; Hong Kong Hansard 25 April 1921, 40.

⁶⁹⁸ Hong Kong Government, 'Hong Kong Blue Book 1920' (Hong Kong, Hong Kong Government Printer, 1921), c3.

⁶⁹⁹ Letter from Reginald Stubbs to Winston Churchill (23 June 1921), CO129/468, 180.

Table 3.3: Stamp revenues, 1920–1922

Calendar Year	Annual stamp duty collection (HK\$)
1920	1,392,821 ^a
1921	2,138,572 ^b
1922	2,665,675 ^c

^a Hong Kong Blue Book 1920, c3.

^b Hong Kong Blue Book 1921, c3.

^c Hong Kong Blue Book 1922, c3.

As the 1921 Stamp Ordinance came into operation on 2 May 1921,⁷⁰⁰ the 1921 collection reflected a mixed collection result under the new law and the old law. A more affirming comparison can be made between the revenues collected in 1920 and 1922. The increase was HK\$1,272,854 (91%). It must be concluded that the reform was a huge financial success exceeding the expectation of the Hong Kong government. The financial success of Stubbs's government was in sharp contrast to Blake's administration which had instituted policy to aspire to a similar outcome around twenty years before.

With the foregoing in mind, the objective in examining the 1921 stamp duty reform was to identify the factors that enabled stamp revenue to nearly double in the following year. Investigation of the general history of Hong Kong, Legislative Council records and a thorough examination of the 1921 Stamp Ordinance, revealed three main factors that contributed to the immense financial success of the 1921 Ordinance.

1. Widening tax base matched to economic circumstances

In an unequivocally revenue-raising reform to enhance revenue, Kemp amended the tax structure by widening the tax base. The 1921 stamp duty reform introduced six new chargeable instruments into the stamp duty structure. Duties imposed on exchange contracts,⁷⁰¹ telegraphic transfers, circular

⁷⁰⁰ Hong Kong Stamp Ordinance, No 8 of 1921, s 45.

⁷⁰¹ Exchange contracts were contracts for sale and purchase of foreign currency. Hong Kong Stamp Ordinance, No 8 of 1921, s 2(10).

notes,⁷⁰² letters of credit and traveller's cheques, were entirely new and did not even exist in the British Stamp Act of the same era. Share contract notes and certificates to practice⁷⁰³ were adopted from British law.⁷⁰⁴

By analysing the new impositions, it can be concluded that of the six new chargeable instruments, five were related to financial services and stock-trading activities.

Venerable Hong Kong historians advocate that trade remained the mainstay of the Hong Kong economy during the inter-war years, while considerable industrial development also took place.⁷⁰⁵ However since reliable statistics for different sectors of the economy are not available for this period, the exact scope and foci of economic development cannot be ascertained.⁷⁰⁶

Examination of legislative records relating to stamp duty reveals that financial services acted as another pillar to the Hong Kong economy during the inter-war years which was not readily discerned by Hong Kong historians. Proof to support this stage of financial service development was found in the Legislative Council debate on the 1921 stamp duty reform relating to the importance of a telegraphic transfer operation to the Hong Kong economy.⁷⁰⁷ The discussion reveals Kemp had matched new taxable instruments to a relatively new but important sector of the economy in order to generate considerable and sustainable income.

⁷⁰² A document requested by a bank to a foreign bank to pay a specific sum of money to a named person.

⁷⁰³ Certificates to practice were annual certificates that professionals, such as doctors, dentists and solicitors and other designated professions, had to obtain before the commencement of practice in Hong Kong. In Britain, it was specified under the British Stamp Act 1891 (54 & 55 Vict c 39), ss 44–45 that only the legal profession, such as solicitors, barristers or related personnel, were required to take up the certificates.

⁷⁰⁴ Per Joseph Kemp, Hong Kong Hansard 14 April 1921, 30.

⁷⁰⁵ Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 107; John M Carroll, *A Concise History of Hong Kong* (Hong Kong, Hong Kong University Press 2007), 92–93.

⁷⁰⁶ Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 107.

⁷⁰⁷ Hong Kong Hansard 25 April 1921, 42. During the discussion on whether to accept the imposition of stamp duty on telegraphic transfers, Archibald Lang, an unofficial member, informed the Council that with a stamp duty on telegraphic transfers, the colony would lose HK\$30 million a year as clients would refuse to bring their money to Hong Kong to be sent home. Alexander Stephen, another unofficial member, disagreed and remarked: 'The clients must come to the biggest market, which is Hong Kong'.

2. Tax rates increment capacity that could be exploited without driving trade away

The examination of legislative records in search of reasons for the doubling of revenue within a year showed that Kemp did not obtain the sum by simply doubling all existing duties in 1921. In order to achieve the pre-set objective, some duties were doubled, a handful was more than doubled but some were not increased at all.⁷⁰⁸ The precept that Kemp followed to determine the magnitudes is therefore of great interest. It was ascertained that Kemp's adopted policy was to observe the stamp duty increment capacity that could be exploited without driving trade away. The evidence to support this conclusion can be found in the Legislative Council discussions on the effect of the proposed increase of stamp duty rates on trade and commerce⁷⁰⁹ as well as the public's reaction that the 1921 stamp duty reform was an 'attack on free trade'.⁷¹⁰ The historical records establish that Kemp understood some duties could not be safely doubled in formulating his policy because such would have the effect of driving trade away from the colony, a consequence which was highly undesirable to the colonial government. From the standpoint of stamp duty collection, driving trade away would certainly lead to an undesirable reduction of the overall stamp duty revenue yield as the system depended largely on commercial documents.

3. Kemp's radical stamp duty mechanisms

That Kemp's driving imperative was to raise revenue is revealed by the revolutionary changes he made to the stamp duty collection mechanism in 1921 to ensure revenue procurement.

In Britain at that time, the payment of stamp duty on written instruments was voluntary, subject to only a few clear exceptions.⁷¹¹ The principal sanction of the British Stamp Act 1891⁷¹² that was in force in 1921 was nullity of evidence. If the parties to a transaction by a written instrument were prepared to forgo any legal proceedings which would require the production of that instrument, there was no obligation upon them to stamp. Kemp confirmed this view: 'It was no

⁷⁰⁸ Letter from Reginald Stubbs to Winston Churchill (23 June 1921), CO129/468, 199–201.

⁷⁰⁹ Hong Kong Hansard 14 April 1921, 43–44.

⁷¹⁰ Ibid 41.

⁷¹¹ Letter from Reginald Stubbs to Winston Churchill (23 June 1921), CO129/468, 199. The exceptions were made so as not to have negative influence on trade.

⁷¹² 54 & 55 Vict c 39.

offence not to stamp an instrument (in Britain) and the Crown cannot sue for the duty.⁷¹³

Kemp reversed the British tradition completely by rendering the payment of stamp duty on written instruments compulsory, subject to a few clear exceptions.⁷¹⁴ Only attested copies, duplicates, agreements with a corporate body and agreements under hand were still treated on a voluntary basis.⁷¹⁵ Kemp made the payment of stamp duty a civil debt, and the non-payment of stamp duty, a criminal offence.⁷¹⁶ In other words, the Collector of Stamp Duty could sue for the unpaid stamp duty even if the parties to the written instruments were prepared to forgo any subsequent legal proceedings related to such instruments. The Hong Kong doctrine had significantly departed from the British tenet for the first time. This was a bold and resolute step taken by Kemp to secure stamp revenue.

Notwithstanding the law had been altered to make stamp duty payments compulsory, another issue that needed serious consideration was how to ensure compliance and thus system sustainability. It is found that Kemp introduced some new provisions into the stamp duty legal framework to support the compulsory imposition of stamp study.

Kemp stepped up the fine to a maximum of HK\$10,000 and more seriously he added imprisonment, not exceeding one year, as a possible penalty for evading stamp duty.⁷¹⁷ Kemp informed the public that the government would not hesitate to ask for imprisonment where stamp duty was 'deliberately and systematically' evaded.⁷¹⁸

In addition, Kemp also lifted the corporate veil for instigating stamp duty offences. The Hong Kong Stamp Ordinance 1921 provided that office bearers of a company would be criminally liable if the company had committed a stamp

⁷¹³ Hong Kong Hansard 14 April 1921, 29.

⁷¹⁴ Hong Kong Stamp Ordinance, No 8 of 1921, sch.

⁷¹⁵ Ibid.

⁷¹⁶ Hong Kong Stamp Ordinance, No 8 of 1921, s 5(7).

⁷¹⁷ Ibid s 43.

⁷¹⁸ Hong Kong Hansard 14 April 1921, 35.

duty offence.⁷¹⁹ The 1921 Ordinance further attached criminal liability to taxpayers who had destroyed any books of accounts or instruments for the purpose of evading stamp duty.⁷²⁰ All these rules were peculiar to Hong Kong and had no precedent in the British Stamp Act⁷²¹ of the same era. These regulations would intimidate the taxpayers to pay up the relatively small amount of stamp duties forthwith when the written instruments were executed rather than to later face severe consequences.

Kemp introduced the concept of 'jointly and severally liable' to stamp duty for instruments that involved two or more parties.⁷²² To illustrate, the persons liable for stamping of a transfer of trademark under the 1921 Ordinance were 'all persons executing'.⁷²³ The Collector could sue any party to the transfer for the full amount of duty in arrears. Before the implementation of Kemp's concept, the Stamp Office could only collect the duty from the transferee based on British tradition. The British Inland Revenue criticised the Hong Kong provision, determining that the identity of the accountable parties was unnecessarily harsh:

In the United Kingdom, an instrument of transfer of property is usually executed by one only of the principal parties to the transaction – the transferor – whose interest in and control over the instrument ceases when he hands it to the transferee in exchange for the consideration money. In these circumstances the liability which the Hong Kong Ordinance imposes on a vendor would be an intolerable burden in the United Kingdom.⁷²⁴

Notwithstanding the censure, Kemp maintained that Hong Kong should keep the provision and explained: 'The idea is that every person who puts his name to the document is under an obligation to see that it is duly stamped.'⁷²⁵

⁷¹⁹ Hong Kong Stamp Ordinance, No 8 of 1921, s 39.

⁷²⁰ Ibid s 41.

⁷²¹ British Stamp Act 1891 (54 & 55 Vict c 39).

⁷²² Hong Kong Stamp Ordinance, No 8 of 1921, s 5(5).

⁷²³ Ibid sch.

⁷²⁴ Letter from British Inland Revenue to Under Secretary of State of the Colonial Office (22 October 1921), CO129/472, 667.

⁷²⁵ Letter from Reginald Stubbs to Winston Churchill (12 January 1922), CO129/474, 40.

The evidence collected shows that it was again a significant departure from the British stamp duty principle as to who had the liability to settle the duty. It appears that the law was formulated to ensure that the Stamp Office could sue any party to the instrument for the full amount of duty even if another party had evaded. Nevertheless, the new rule was even more effective in pre-empting such evasions by affecting the behaviours of the taxpayers to safeguard themselves from criminal proceedings by ensuring that other parties to the instruments paid the duties.

Another provision introduced by Kemp to ensure people complied with the 1921 Stamp Ordinance was to render unstamped documents wholly inadmissible in civil proceedings or registrations.⁷²⁶ This was another great departure from the British stamp duty legislation in 1921⁷²⁷ where documents could be admitted on payment of penalties.⁷²⁸

Kemp also introduced a new section to empower the Collector of Stamp Duties to inspect and search any premises with a Magistrate's search warrant,⁷²⁹ where he thought there might be any books of accounts, or other documents that might indicate stamp duty evasion.⁷³⁰ Again, the first observation is there was no parallel in the British Stamp Duty Act during the same period.⁷³¹ Kemp created the concept to enforce the compulsory stamp duty obligation. The power of inspection aimed to decrease evasion and strengthen voluntary compliance.

Lastly, Kemp applied the principle of splitting generally, to all chargeable instruments, and placed the onus of proof with the taxpayers.⁷³² The intention of the law was to prevent taxpayers from dividing transactions into a series of smaller transactions so as to avoid the higher tax brackets. At that time, Britain only enforced the rule on receipts.⁷³³ Again, Kemp had departed from the stamp

⁷²⁶ Hong Kong Stamp Ordinance, No 8 of 1921, s 6.

⁷²⁷ British Stamp Act 1891 (54 & 55 Vict c 39).

⁷²⁸ Ibid ss 14–15.

⁷²⁹ Hong Kong Hansard 25 April 1921, 50.

⁷³⁰ Hong Kong Stamp Ordinance, No 8 of 1921, s 40.

⁷³¹ British Stamp Act 1891 (54 & 55 Vict c 39).

⁷³² Hong Kong Stamp Ordinance, No 8 of 1921, s 10.

⁷³³ British Stamp Act 1891 (54 & 55 Vict c 39), s 103(3); Per Joseph Kemp, Hong Kong Hansard 14 April 1921, 30.

duty law of Britain and widened the application of the British splitting doctrine in Hong Kong to all relevant instruments.

Contrasting the 1921 reform with the unsuccessful stamp duty amendments of 1902,⁷³⁴ it is found that Kemp's formula of introducing novel instruments consistent with the stage of economic development was, in essence, similar to Robinson's pioneering initiatives in 1894.⁷³⁵ Further, both Robinson and Kemp had pondered the maximum increment capacity that could be exploited with existing dutiable instruments even though they gauged by different yardsticks. The 1921 reform had clearly avoided the pitfall associated with doubling the duties across the board established by the 1902 stamp amendments executed by Blake.⁷³⁶

Perhaps the most important lesson from the 1921 reform was to reaffirm the unparalleled importance of making fundamental prudent changes to the stamp duty mechanism to enhance revenue collection. Before 1921, the Hong Kong government had launched stamp duty changes in compliance with the aforementioned principles with good results⁷³⁷ but never in the history of Hong Kong stamp duty had an almost 100% increase in revenue been achieved within a year of implementation, as occurred following the 1921 reform. The landmark difference in the 1921 reform was that Kemp made stamp duty a compulsory tax. In effect, Kemp had transformed the stamp duty legislation into a penal statute. To support this he introduced various ground-breaking mechanisms.⁷³⁸ The fact that most of these mechanisms are still in use today⁷³⁹ supports the assertion that Kemp's work laid a foundation stone for stamp duty financial successes as well as system sustainability in subsequent years.⁷⁴⁰

⁷³⁴ See section 3.3.6.

⁷³⁵ See section 3.3.5.

⁷³⁶ See section 3.3.6.

⁷³⁷ See for example, the 1884 Hong Kong stamp duty reform, section 3.3.3.

⁷³⁸ To support this landmark advancement, the concept of 'jointly and severally liable' on stamp duty payments, as well as the notion of not allowing unstamped documents to be admissible in civil proceedings and registration, were introduced. In addition the Collector of stamp duty was given the power to inspect premises.

⁷³⁹ Hong Kong Stamp Ordinance, c 117 (Originally No 31 of 1981).

⁷⁴⁰ The ensuing changes to the mechanisms are discussed under the section Sustainability in Chapter 4. See section 4.2.

3.3.8 Unwarranted exemption that caused revenue depletion

The group of Stamp Duty Ordinances enacted before World War II confirmed that a predominant imperative of the Hong Kong government was to raise revenue, thus focusing on the issue of unwarranted exemptions which had the effect of substantially reducing revenue.

The Hong Kong Stamp Amendment Ordinance 1885⁷⁴¹ focused on the question of exemption specifically for military personnel. This was the starting point to demonstrate why it was ill-judged to create such a privileged class of stamp duty taxpayer in Hong Kong in the nineteenth century. The pitfall highlighted is still relevant today for policy makers contemplating stamp duty exemption policy.

The Colonial Office instructed the Hong Kong government to exempt stamp duty on receipts given by the officers and soldiers stationed in Hong Kong for their salaries received from the British government.⁷⁴² This was to assimilate the law of the colony to that of Britain in a similar situation.⁷⁴³

First, the policy to exempt military personnel from stamp duty caused an unnecessary loss of revenue. In 1868, Governor MacDonnell wrote to the Colonial Office to express his discontent regarding the exemption of rates and taxes on houses occupied by British military personnel stationed in Hong Kong. This caused a heavy loss of revenue to the Hong Kong government.⁷⁴⁴ What MacDonnell had articulated on rates was pertinent to stamp duty.

Second, the policy to exempt military personnel from local taxation was inadmissible as it effectuated a double depletion of the colonial government's revenue. The British government had already demanded a direct military contribution from the Hong Kong government's revenues to defray the remunerations of the military officers and soldiers. Thus it was considered

⁷⁴¹ No 2 of 1885.

⁷⁴² Letter from George Bowen to Edward Stanley (5 September 1884), CO129/217, 268.

⁷⁴³ Ibid.

⁷⁴⁴ Letter from Richard MacDonnell to Richard Grenville (19 October 1868), CO129/133, 69.

unreasonable for the British military personnel to be also exempted from Hong Kong tax thereby inducing another reduction in colonial revenue.⁷⁴⁵

Third, it would cause a vicious cycle of provoking other taxpayer groups to demand similar favoured tax treatment and cause the unnecessary loss of revenue, as well as the double depletion of revenue. The proof to support this is found in the Hong Kong Stamp Amendment Ordinance 1890.⁷⁴⁶ Essentially, the only change this measure introduced was to exempt Hong Kong civil servants from paying stamp duties on receipts given by them on salaries they received from the government. In his submission to the Secretary of State for the Colonies on the amendment, Governor Sir William Des Voeux (in office 1887–1891) remarked that similar stamp duties belonging to the army and navy had been expressly exempted and he found no correspondence showing why the exemption for civil servants had not been effected previously. Des Voeux consulted the Hong Kong Executive Council (which was made up of Hong Kong senior civil servants) on the matter; the Council's opinion was that the exemption for the civil servants was accidentally omitted in the previous stamp duty legislation.⁷⁴⁷ It is clear, from the examination of Hong Kong stamp duty history in this study, that the omission was not accidental; it was not intended at all. An explicit example was MacDonnell's refusal to grant stamp duty exemption on powers of attorney by civil servants for the receipt of their salaries by another person in 1868.⁷⁴⁸ The presence of a privileged class of taxpayers would hinder the Hong Kong Governor from maintaining social stability and seeking economic development.⁷⁴⁹ Perhaps MacDonnell understood the undesirable effects of the presence of privileged classes of taxpayers. If MacDonnell were still in charge of Hong Kong in 1890, he would certainly have banned the 1890 amendment which depleted revenue unnecessarily and caused inequity.

⁷⁴⁵ Ibid 71.

⁷⁴⁶ No 14 of 1890.

⁷⁴⁷ Letter from William Des Voeux to Henry Holland (12 August 1890), CO129/246, 144.

⁷⁴⁸ This was a deduction made by comparing the original recommendation of the 1868 Commission of enquiry to render the powers of attorney by civil servants for the receipt of their salaries by another person to be exempted with Governor MacDonnell's final rejection of the notion, which was apparent from his subsequent announcement of the final 1868 Stamp Duty Bill. See Report of Commission on Hong Kong Stamp Ordinance 1866 (27 March 1868), CO129/131, 56–57; *Hong Kong Government Gazette*, '1868 Stamp Duty Bill Read First Time' (Hong Kong Government 9 May 1868).

⁷⁴⁹ Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilization* (2nd edn, Lanham, Maryland, Madison Books 1999), 13–15.

3.3.9 Stamp duty law to capture tax revenue from capital gains

A dominant financial imperative clearly underpinned the Hong Kong stamp duty reform immediately after the World War II. Following the Japanese occupation during 1941–1945, there was a severe revenue exigency to rebuild the colony. Governor Sir Mark Young (in office 1946–1947) appointed a Taxation Committee in 1946 to consider ‘what new sources of revenue are available for immediate utilisation’.⁷⁵⁰ The 1946 Taxation Committee recommended the increment in the value of property to be assessed without suggesting how Hong Kong should go about implementing it.⁷⁵¹

The legislature responded by introducing the Hong Kong Stamp Amendment Ordinance 1946.⁷⁵² Preliminary examination of the 1946 legislation reveals that it levied a capital gains tax via the stamp duty mechanism. This broke the common present day belief that the colony had never imposed a capital gains tax in its revenue law history.⁷⁵³

The examination of the 1946 stamp legislation provides answers as to why the government did not set up a separate capital gains tax system in Hong Kong. In addition, the analysis yields an answer as to whether the path adopted was successful.

Turning to the design of the 1946 Stamp Amendment Ordinance, fourteen sections were added to the original 1921 Stamp Duty Ordinance⁷⁵⁴ to host the capital gains tax.

⁷⁵⁰ Draft Report of The Taxation Committee of 1946 (Undated), CO129/593/3, 106. The actual report seems not to have survived till the present day. A draft of the report is retrieved from the aforementioned Colonial Office record. However, it is certain that Hong Kong had acted upon the report to make changes to its stamp duty law as it made representation that the 1946 Hong Kong Stamp Amendment Ordinance was a result of the recommendation made by the Taxation Committee. See Hong Kong Hansard 17 October 1946, 168.

⁷⁵¹ Draft Report of The Taxation Committee of 1946 (Undated), CO129/593/3, 107. The other recommendations were to levy a new tax on meals and liquors sold in hotels and restaurants, to increase the duty on imported liquor and tobacco and; to increase port dues, water charges and licence fees.

⁷⁵² No 22 of 1946.

⁷⁵³ Michael Littlewood, ‘Hong Kong’s Once – And Future? – Capital Gains Tax’ (1998) 2(4) Asia Pacific Journal of Taxation, 7.

⁷⁵⁴ The new sections were inserted as ss 5A(1) – 5A(14) to the principal Hong Kong Stamp Ordinance, No 8 of 1921.

In a nutshell, it stipulated that the 10% charged on the ‘excess consideration’ was in addition to the stamp duty already payable in respect of the conveyance on sale.⁷⁵⁵ It described a complicated method to measure the ‘excess consideration’. In essence, stamp duty was levied on the difference between the consideration of the conveyance and the last consideration recorded after 1 January 1938 in the Hong Kong Land Office.⁷⁵⁶ The stamp duty on capital gains was levied on the ‘new conveyance’ executed on or after 30 September 1946.⁷⁵⁷ The black letter law did not mention whether only the first conveyance or all subsequent conveyances were subject to the additional duty. Contemporary research did not discuss this aspect of the law.⁷⁵⁸ From the examination of a secondary source, the Hong Kong Commissioner of Inland Revenue reported in 1957 that excess stamp duty on ‘new conveyance’ was payable only once on the first conveyance after the war, so collections diminished over time.⁷⁵⁹ The Ordinance also allowed taxpayers to reduce tax liability by augmenting the base consideration with costs of improvement as well as the cost of restoring the property. The tax was borne by the seller.

Certainly the government would have the option to introduce a separate capital gains tax system in the colony. Nonetheless, by analysing the historical background, it might not have been the best option for three reasons. First, the British Inland Revenue would not be able to supply Hong Kong with model capital gains tax legislation for adoption, as it was not then available.⁷⁶⁰ Second, Hong Kong needed the revenue in the near term. It lacked time to draft a brand new branch of revenue law as well as legislative time to submit the draft law to

⁷⁵⁵ Hong Kong Stamp Amendment Ordinance, No 22 of 1946, s 2.

⁷⁵⁶ Excess consideration was defined as the amount by which the value of the consideration for the property comprised in any new conveyance exceeds the value of the consideration previously attributable to such property. The value of consideration previously attributable shall be the last conveyance on sale after 1 January 1938 as recorded in the Hong Kong Registers of Land Office. If there was no record, the value of consideration previously attributable shall be deemed to be the value on the 1 January 1938 or the date when the property was first acquired from the Crown, whichever shall be the later date. See further: Hong Kong Stamp Amendment Ordinance, No 22 of 1946, s 2.

⁷⁵⁷ Hong Kong Stamp Amendment Ordinance, No 22 of 1946, s 2.

⁷⁵⁸ See Michael Littlewood, ‘Hong Kong’s Once – And Future? – Capital Gains Tax’ (1998) 2(4) *Asia Pacific Journal of Taxation*, 7.

⁷⁵⁹ Hong Kong Commissioner of Inland Revenue, ‘Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1956–57’ (Hong Kong, Hong Kong Government Printer 1957), 19.

⁷⁶⁰ Martin Daunton, *Just Taxes: The Politics of Taxation in Britain, 1914-1979* (Cambridge, Cambridge University Press 2002), 215.

thorough discussion. Third, the government had no resources to set up an additional department to administer a separate branch of tax.

These limitations led to the integration of capital gains tax into the existing stamp duty system. In 1946, the Hong Kong stamp duty collection and anti-avoidance provisions were already time tested and needed no extensive remodelling to incorporate the new tax. In particular, the Hong Kong stamp duty system was proven to be successful in collecting estate duty before the provisions were repealed in 1921.⁷⁶¹ No new set up costs for an additional department were required, as the Collector of Stamp Duty would be in charge of the collection.

The analysis demonstrates that stamp duty could be used conveniently as a means by which to levy taxes that were in substance more aptly classified as other branches of the tax regime. Noticeably, death duty was also levied in Hong Kong as stamp duty on probates,⁷⁶² until the establishment of estate duty legislation in 1915.⁷⁶³ In this case, the vehicle to impose stamp duty on capital gains was the conveyance on sale.

Yet, the evidence collected suggests that the tax was not successful and was quickly repealed. After two years of the operation, the excess stamp duty on capital gains of 10% was repealed by the Hong Kong Stamp Amendment Ordinance 1948⁷⁶⁴ and replaced with an excess stamp duty of 3% on the full transactional values of the conveyances in addition to the normal stamp duty.⁷⁶⁵ The imposition of a stamp duty on the gross conveyance consideration was to preserve the original function of levying tax on capital appreciation. The reason articulated to effect the change was that the 1946 measures to ascertain the value of capital gains 'proved complicated' and 'a cause for delay in practice'.⁷⁶⁶ It showed that the failure was not attributable to the capacity of the stamp duty system to accommodate other forms of taxation. The failure was due to the lack

⁷⁶¹ Hong Kong Hansard 14 April 1921, 31.

⁷⁶² Hong Kong Stamp Ordinance, No 22 of 1901, sch. Another example was an attempt to levy sales tax by using sales agreements as the collection instrument. See Letter from Reginald Stubbs to Winston Churchill (23 June 1921), CO129/468, 205–206.

⁷⁶³ Hong Kong Estate Duty Ordinance, No 16 of 1915.

⁷⁶⁴ No 46 of 1948.

⁷⁶⁵ Hong Kong Stamp Amendment Ordinance, No 46 of 1948, s 3.

⁷⁶⁶ Hong Kong Hansard 25 August 1948, 245.

of legislative time to formulate a viable convenient formula to ascertain the capital gains. Eventually, the 3% excess duty on assignments was abolished by the Hong Kong Stamp Amendment Ordinance 1969.⁷⁶⁷ It was repealed after twenty years in operation as the yield of the duty dwindled due to the diminished supply of unconveyanced pre-war property.⁷⁶⁸

The introduction of Hong Kong Stamp Amendment Ordinance 1948⁷⁶⁹ led to the postulation of the theorem that Hong Kong stamp duty on the conveyance of property imposed on gross conveyance consideration fulfilled the function of a capital gains tax. In any event, if the duty rate was fixed for each conveyance document regardless of its transaction value, stamp duty was not compromised as a capital gains tax. This was not the case for Hong Kong stamp duty.

In Hong Kong, the applicable rate was *ad valorem*. In this case, stamp duty on conveyances would comprise two components. It was the sum of the stamp duty imposed on the original purchase consideration plus stamp duty imposed on the capital gain (or less the amount equivalent to the rate of stamp duty applied to the capital loss).⁷⁷⁰ This may be presented in simple algebraic form as follows:

$$RC = RP + R(C - P)^{771}$$

where:

R = Stamp duty rate

C = Conveyance consideration

P = Seller's purchase cost

The foregoing formula yielded certain deductions which were tied to whether stamp duties were paid by the buyers, sellers or shared between buyers and sellers.

⁷⁶⁷ No 17 of 1969.

⁷⁶⁸ Per John Cowperthwaite, Hong Kong Hansard 13 March 1969, 98.

⁷⁶⁹ No 46 of 1948.

⁷⁷⁰ Charles Kennedy, 'Stamp Duties as a Capital Gains Tax' (1955) 23(3) *The Review of Economic Studies*, 241.

⁷⁷¹ Ibid.

When only the seller paid the stamp duty, it was revealed that the seller would be subject to a capital gains tax equivalent to $R(C-P)$. In the event that the property depreciated, the seller would not be penalised on the realised capital loss as a negative $R(C-P)$ was generated to reduce the stamp duty payable. As such, this demonstrates that stamp duty could be regarded as a capital gains tax. This was the case when the Hong Kong Stamp Amendment Ordinance 1948⁷⁷² provided that the excess stamp duty of 3% would be levied on the value of the assignments and the liability to pay fell on the seller.⁷⁷³

In all other cases, the Hong Kong practice followed the British precedent in which it was customary for the buyer to settle the stamp duty.⁷⁷⁴ When only the buyers paid the stamp duty,⁷⁷⁵ it was revealed that they settled the portion of stamp duty gains $R(C-P)$ for the previous owners or they inherited the benefits of the losses $R(C-P)$. It was not plausible to argue that buyers were subject to capital gains tax, as their purchasing decisions did not give rise to any capital gains or losses realised by them. The analysis shows that stamp duty was not a payment of capital gains tax from the buyers' perspective.

Nonetheless, it can also be recalled that Kemp introduced the concept of 'jointly and severally liable' in 1921, to apply to stamp duty for instruments that involved two or more parties, to pre-empt evasion.⁷⁷⁶ Following the discussion to this point, when the sellers and the buyers shared the stamp duty on conveyances, it was a quasi-capital gains tax disguised as stamp duty with the sellers' portion justly admitted as a capital gains tax in nature.

The foregoing discussion examined the connection of stamp duty and capital gains tax on immovable properties that were purchased for long-term capital investment purposes. It is submitted that the explored concepts were equally applicable in the event that such properties were purchased for short-term investment purposes.⁷⁷⁷ In that event, it can be argued that the Hong Kong

⁷⁷² No 46 of 1948.

⁷⁷³ Hong Kong Stamp Amendment Ordinance, No 22 of 1946, s 9.

⁷⁷⁴ See section 3.3.7.

⁷⁷⁵ In the present day, there is an unwritten convention in Hong Kong that the buyer will bear the stamp duty on conveyances of sale.

⁷⁷⁶ See section 3.3.7.

⁷⁷⁷ Presently, the Hong Kong Inland Revenue Department adopted the six badges of trade as arrived at by the United Kingdom Royal Commission on the Taxation of Profits and Income

stamp duty system was in effect collecting income tax in certain instances when the sellers were liable to pay stamp duty.

It is further submitted the concepts discussed above are equally applicable to stamp duties imposed on Hong Kong share transactions.

3.3.10 The merit of third party collection mechanism

The financial imperative continued as the major driving force behind developments in the Hong Kong stamp duty regime in the 100 years following the introduction of stamp duty in the 1860s. Financial Secretary Arthur Clark (in office 1952–1961) forecasted a severe budget deficit for fiscal year 1961/62 of HK\$194 million.⁷⁷⁸ Clark proposed to borrow and at the same time raise some extra revenue by additional charges and taxation. One of the proposals was to raise an additional HK\$2.5 million from stamp duty through third party collection.

The 1961 budget deficit was mainly triggered by financial commitments to essential public works such as improvement to water supplies, airport expansion,⁷⁷⁹ roads and tunnels work,⁷⁸⁰ hospital construction⁷⁸¹ and public housing development.⁷⁸² In particular, water projects took up around HK\$110 million, that is, around 13% of the estimated total 1961/62 revenue of HK\$878 million. These water undertakings were pressing as emphasised by Governor Sir Robert Black (in office 1958–1964) in 1961: 'In recent years, we have all had much to say about that important adjunct to our economic existence as well as to our domestic comfort, namely, water.'⁷⁸³

1955 to distinguish revenue receipts from capital receipts. See Patrick K W Ho, *Hong Kong Taxation and Tax Planning* (14th edn, Hong Kong, Pilot Publishing Company Ltd 2015), 191.

⁷⁷⁸ Hong Kong Hansard 1 March 1961, 43.

⁷⁷⁹ This relates to the construction of the airport terminal building for Kai Tak Airport.

⁷⁸⁰ This relates to the construction of the Lion Rock Tunnel.

⁷⁸¹ This relates to the construction of the Queen Elizabeth Hospital.

⁷⁸² Hong Kong Hansard 1 March 1961, 42.

⁷⁸³ Ibid 25. See also K W Chau, 'Management of Limited Water Resources in Hong Kong' (1993) 9(1) *International Journal of Water Resources Development*, 65. Water rationing was a constant reality for Hong Kong residents during that era, occurring on average more than 300 days per year. The worst crisis occurred in 1963–64 when water was delivered only every 4 days for 4 hours each time. In the 1960s, Hong Kong embarked on a three-pronged approach to supply water to an increasing population. The strategy involved seawater flushing, the construction of larger freshwater reservoirs in bays that used to be covered by the sea, and water imports from Mainland China. See also Hong Kong Hansard 1 March 1961, 42, HK\$110 million was spent in 1961/62 to construct the Shek Pik Reservoir, and Plover Cove Reservoir with its main dam being one of the largest in the world at the time of its construction, plus many

The Hong Kong Stamp Amendment Ordinance 1961⁷⁸⁴ comprised partial amendments to stamp duty structures to enhance revenue. It made hire purchase agreements assessable for stamp duty with a fixed rate of HK\$5. In addition, bank notes duty was also increased from 1% to 1.5% per annum on the average value of bank notes in circulation. Further the duty on agreements other than hire purchase was increased from HK\$1 to HK\$3.⁷⁸⁵

By analysing the financial outcome of the new law, the core provision that contributed most to the pre-set revenue objective of HK\$2.5 million was the increased duty on share contract notes from 0.1% to 0.2%, as illustrated below:⁷⁸⁶

Table 3.4: Analysis of stamp duty collections for contract notes – two years to 31 March 1962

Type of document	31 March 1961 (HK\$)	31 March 1962 (HK\$)	Increase (HK\$)	Increase (%)
Contract Notes	3,374,472	6,098,843	2,724,371	80.7%

The years 1961 and 1962 provided a suitable platform for comparison, as the Hong Kong economy was buoyant in both fiscal years with a high level of land sales and share trading.⁷⁸⁷ Contract note revenue increased markedly by 80.7% during the first year of operation of the 1961 stamp amendment legislation. This alone met the government objective for the 1961 stamp amendment.

Through the review of the law governing the stamp duty on contract notes, it can be concluded there were two cornerstones to the financial accomplishment.

other water projects. Even with the water imports from Mainland China from the 1960s, Hong Kong did not stop embarking on water projects in the 60s, 70s and 80s as the government feared that China might exercise the 'water weapon' in its relationship with Hong Kong.

⁷⁸⁴ No 16 of 1961.

⁷⁸⁵ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1961–62' (Hong Kong, Hong Kong Government Printer 1962), 15.

⁷⁸⁶ Ibid 27.

⁷⁸⁷ Ibid 3.

First, the tax incidence was on asset goods.⁷⁸⁸ Asset goods were able to deliver a short-term speculative yield or long-term capital gains. As such, taxpayers would be more co-operative in paying the related stamp duties in anticipation of future gains to offset the stamp duties paid.

Second, and more significantly, with the concept of compulsory payment and the third party collection mechanism already in place for contract notes since the 1921 stamp duty reform, the revenue loss associated with the programme to increase revenue with a substantial upsurge in duty rates,⁷⁸⁹ could be controlled. The compulsory stamp duty on public share dealings was collected by stock agencies and rendered defaults by the seller and buyers implausible.⁷⁹⁰

3.3.11 Financial disappointment on significant stamp duty increase on asset goods

Another major financial imperative making necessary changes to the stamp duty legislation occurred in the early 1970s. During the fiscal year 1973/74, the Hong Kong government aimed to create a more equitable and less cumbersome Hong Kong tax system by granting substantial income tax relief. Further, the government abolished the heavy oil tax in order to reduce electricity charges, put an end to the tax on table water to stabilise the price of this non-alcoholic beverage and abolished the tax on admission charges to cinemas.⁷⁹¹ All these measures gave rise to a compelling financial imperative to fill the resultant revenue gap. The introduction of the Hong Kong Stamp Ordinance 1973⁷⁹² facilitated the principal objective of revenue raising by significantly increasing the stamp duty rates levied on asset goods.

⁷⁸⁸ Asset goods are items that are purchased for their potential to change price rather than purchased for consumption. See George Cooper, *The Origin of Financial Crises: Central Banks, Credit Bubbles and the Efficient Market Fallacy* (Petersfield, Harriman House 2008), 101.

⁷⁸⁹ See section 3.3.7.

⁷⁹⁰ See Hong Kong Stamp Ordinance, No 8 of 1921, s 26; Hong Kong Stamp Ordinance, No 8 of 1921, sch. The stamp duty legislation provided that the stock agencies add stamp duty to their brokerage fees and collect the stamp duty from the transferors as well as the transferees. The brokers were the persons liable for the compulsory stamping of the contract notes before the execution of the documents. The stamp duty legislation specified clearly that the government could deny any legal claims to the brokerage fees with reference to the sale or purchase of shares if the broker failed to comply.

⁷⁹¹ Hong Kong Hansard 28 February 1973, 487–89.

⁷⁹² No 41 of 1973.

In order to compensate for the substantial revenue foregone, the government doubled⁷⁹³ the *ad valorem* stamp duty on contract notes, transfers of shares and marketable securities.⁷⁹⁴ This section provides an analysis relating to the selection of contract notes duty in 1973 as the only instrument to fill the revenue gap. In the search for justification, the general characteristics of stamp duty, as well as the specific characteristics of contract notes stamp duty from the fiscal perspective, are illuminated. This section explains why the stamp duty amendment failed from the financial standpoint, even though a similar exercise succeeded in 1961,⁷⁹⁵ and also explains adherence to the tenet of selecting instruments for duty increments matching economic circumstances, as proposed by Robinson⁷⁹⁶ and Kemp.⁷⁹⁷

Financial Secretary Haddon-Cave (in office 1971–1981) specified restoring the balance between direct and indirect taxation as the sole reason for making up all the revenue losses by increasing stamp duty on share transactions only. He mentioned there was a case for ‘raising additional revenue from one of our main instruments of indirect taxation, the Stamp Ordinance, so as to restore the balance between direct and indirect taxation.’ He gave no further explanation for wanting to restore the balance other than this was ‘a fair way of creaming off something extra’ from the active stock investors.⁷⁹⁸

From an economic perspective, the shift from direct to indirect taxation had a positive impact on employment. The merit of the tax shift was linked to the possibility of spreading the taxation burden across a wider number of taxpayers under stamp duty, thus reducing the direct tax burden on salary earners paying income tax.⁷⁹⁹

⁷⁹³ From HK20¢ to for every HK\$100 to HK\$4 for every HK\$1,000. See Hong Kong Stamp Amendment Ordinance, No 41 of 1973, s 12(d).

⁷⁹⁴ Hong Kong Stamp Amendment Ordinance, No 41 of 1973, s 12 (d).

⁷⁹⁵ See section 3.3.10.

⁷⁹⁶ See section 3.3.5.

⁷⁹⁷ See section 3.3.7.

⁷⁹⁸ Hong Kong Hansard 28 February 1973, 489–90.

⁷⁹⁹ European Commission Services, ‘Macroeconomic Effects of a Shift from Direct to Indirect Taxation: A Simulation for 15 EU Member States’ (72nd Meeting of the OECD Working Party No 2 on Tax Policy Analysis and Tax Statistics, 14–16 November 2006). This provides general modern views of the economic effects of shifting from direct to indirect taxation.

Analysing the prevailing circumstance yields three reasons why Haddon-Cave chose to double the stamp duty rate for share transactions to make up for the revenue foregone.

First, were the factors discussed in section 3.3.10 about the taxpayers' willingness to co-operate in paying the stamp duties on asset goods as well as the utilisation of the third party collection system.

Second, the investigation demonstrates that the government was able to shift the majority of the stamp duty administration and collection cost associated with public stock dealings to the stock exchanges via its Stamp Ordinance. The cost to the Stamp Office was only the engagement of tax inspectors to audit the work of the stock exchanges. This might not have been achievable if Haddon-Cave had chosen other revenue sources. Strong evidence to support this assertion can be found in Haddon-Cave's 1974/75 budget debate when he refused to abolish stamp duty on cheques which was collected by banks. He said: 'I can understand the bank's desire to abolish this duty because they do virtually all the work involved in its administration but I don't think they find it particularly difficult.'⁸⁰⁰ Further, when advocating the benefits of repealing most heads of charge in 1978, he disclosed that the administrative cost of stamp duty collection to the private sector could be substantial.⁸⁰¹

Third, reviewing the economic environment suggests the transformation of the Hong Kong economy in the 1970s paved the way for Haddon-Cave's plan. Hong Kong moved away from its dependence on light industry and shifted towards the property market, stock market and financial services. In the 1972/73 fiscal year, spectacular turnovers on the Hong Kong stock exchanges produced a phenomenal and unprecedented HK\$500 million in contract notes stamp duty as compared to HK\$91 million in the 1971/72 fiscal year.⁸⁰² Moreover, the HK\$500 million in stamp duties collected from contract notes was 70% of the total stamp duties collected in fiscal 1972/73 of HK\$713 million⁸⁰³

⁸⁰⁰ Hong Kong Hansard 28 March 1973, 649.

⁸⁰¹ Hong Kong Hansard 1 March 1978, 556.

⁸⁰² Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1972-73' (Hong Kong, Hong Kong Government Printer 1973), 40.

⁸⁰³ Ibid 4.

and 26% of the total revenue of HK\$1,933 million.⁸⁰⁴ The fundamental economic transformation, the buoyant economic conditions together with the heavy weighting of contract notes stamp duty within the stamp duty system, provided a perfect platform to grant generous tax relief in other areas and concentrate on deriving revenue from contract notes stamp duty. The unofficial members of the Hong Kong Legislative Council as well as the stock exchanges did not register any opposition when Haddon-Cave piloted the double increment of duty.

Nonetheless, the doubling exercise was unsuccessful. Haddon-Cave estimated the extra yield from a doubling of the rate of stamp duty levied on contract notes would be HK\$300 million on the basis of his 'possible conservative forecast of turnover next year (1973/74)' and that would 'more than offset the cost of tax reforms and reliefs' he had proposed.⁸⁰⁵ The actual result was that no extra yield was forthcoming. The stamp duty on contract notes dropped from HK\$500 million (1972/73) to HK\$ 248 million (1973/74). This was attributable to the stock market crash toward the end of 1973 after reaching an all-time high on 9 March 1973.⁸⁰⁶ Haddon-Cave said: 'Wrong I was, but naturally the fault was not mine!'⁸⁰⁷

The collected evidence shows that it was not prudent to initiate policies that depended solely on incremental stamp duties on asset goods for revenue, when the related asset-prices had already risen significantly to an all-time high. There was a consequent risk that the asset goods market bubble would burst during a period of herd behaviour in the asset goods market. The avoidance of such policy initiatives would prevent an acutely unfavourable budget variance similar to that experienced as a consequence of the 1973/74 Hong Kong budget.

⁸⁰⁴ Ibid.

⁸⁰⁵ Hong Kong Hansard 28 February 1973, 490.

⁸⁰⁶ Hong Kong Exchange and Clearing Ltd, 'A Glimpse of the Past'

<<https://www.hkex.com.hk/eng/exchange/corpinfo/history/documents/hkex-01e.pdf>> accessed 12 May 2015.

⁸⁰⁷ Hong Kong Hansard 27 February 1974, 559.

3.3.12 Financial accomplishment on significant stamp duty increase on asset goods

The phenomenal 1973 Hong Kong stock market crash when the Hong Kong Hang Seng index fell from 1,800 points to 300 points in a few months caused a serious financial burden to the Hong Kong government. The injurious effects to trade and commerce significantly decreased revenue yield from income tax. Further, it was unavoidable that stamp duty revenue from stocks fell in step with the stock market free fall.

The financial imperative that arose in the context of the continued economic downturn following the 1973 stock market crash drove the government to increase stamp duties for various instruments from fiscal 1974/75 to 1976/77 to assist in yielding extra revenue.⁸⁰⁸

In particular, the government introduced two Stamp Amendment Ordinances to increase the duty on conveyances on sale from 2% to 2.25% in 1975 and from 2.25% to 2.75% in 1976.⁸⁰⁹ They were successful financially.

This needs to be contrasted with the 1973/74 fiscal failure of doubling duty on share contract notes in a search for guiding principles to determine how to make use of asset goods-related instruments to yield extra revenue.

The government did not provide any reasons for earmarking conveyances on sale to ease financial exigency other than the 'time has now arrived' to make up the loss of revenue from the abolition of 3% excess duty on conveyances of sale in 1969.⁸¹⁰ An interpretation of the prevailing circumstances suggests that the revival of the property market during 1975⁸¹¹ was a major factor considered in the decision.

⁸⁰⁸ See Hong Kong Stamp Amendment Ordinance, No 27 of 1975, s 2. They were cheques, traveller cheques, cashier orders and dividend warrants. Stamp duties on these instruments were collected by financial intermediaries before effecting the services and rendered avoidance associated with tax rates increase exercise difficult.

⁸⁰⁹ Hong Kong Stamp Amendment Ordinance, No 34 of 1975, s 3; Hong Kong Stamp Amendment Ordinance, No 33 of 1976, s 4.

⁸¹⁰ Hong Kong Hansard 26 February 1975, 501; Hong Kong Hansard 25 February 1976, 557.

⁸¹¹ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1975–76' (Hong Kong, Hong Kong Government Printer 1976), 22.

The measure was a financial accomplishment as the actual results met the predicted extra revenue yield⁸¹² and the total stamp duty yield on conveyances on sale was HK\$183,533,968 in the 1976/77 fiscal year, more than double the figure of HK\$79,521,126 in fiscal 1974/75.⁸¹³

It was in this context that a simple principle emerged. In order to be successful in achieving a financial objective, additional stamp duty was best imposed on asset goods that were in a recovery market. Sensibly, stamp revenue then had a greater chance to succeed, with the probable higher transaction frequency and elevated prices. It should be contrasted with the earlier financial failure occasioned by imposing additional stamp duty on stock contract notes at a time when the market had peaked. Retrospectively, the historical lesson might sound rudimentary, but even a seasoned financial administrator such as Haddon-Cave once fell into the trap.

3.3.13 Was financial imperative the most influential driver for Hong Kong stamp duty development?

The analysis of Hong Kong stamp duty history reveals that the most powerful imperative that drove the development of stamp duty law was the need for revenue. Three principal reasons stand out.

First, the investigation outlined in section 3.3 highlights the large number of Hong Kong Stamp Ordinances implemented with explicit or implied objectives to pursue revenue in the period 1867 to 1977. During this 110 year period, other Hong Kong stamp duty legalisation was promulgated for purposes having a non-revenue focus (and which are considered below) though these numbered far less than initiatives linked to a financial imperative. An analysis of the stamp duty law promulgated during the last 20 years of British rule (ie 1978 to 1997) shows that the former dominant financial imperative influencing the stamp duty system gave way to other emerging imperatives.⁸¹⁴ Indeed, no stamp duty laws were promulgated during the last 20 years of British rule, for the sole purpose of revenue raising. This might be attributable to the significant growth in Hong

⁸¹² Per Philip Haddon-Cave, Hong Kong Hansard 25 February 1976, 557.

⁸¹³ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1976–77' (Hong Kong, Hong Kong Government Printer 1977), 22.

⁸¹⁴ See below section 3.4.5; section 3.4.6; section 3.4.7; section 3.5.3; section 3.5.4.

Kong's economy after 1977,⁸¹⁵ generating a stable source of tax revenue. Another possible reason was that the colonial government refrained from making substantive changes to the stamp duty system for revenue purposes during the politically sensitive period before the reversion of sovereignty. Notwithstanding these discoveries, it is notable that the financial imperatives remained the most powerful in shaping the Hong Kong stamp duty system in its 130 years of development under British rule.

Second, the examination of stamp duty history demonstrates that the Hong Kong government adopted many British stamp duty laws and tenets in response to financial imperatives. It had also designed many significant ground-breaking stamp duty regulations of its own, such as making stamp duty payments compulsory, rather than voluntary, to enhance stamp duty revenue yield to meet financial exigencies. Some of these Hong Kong rules were ahead of Britain at the time of their introduction.

Third, most of these rules are still retained in the current Hong Kong stamp duty system. Thus, it is aptly interpreted that the financial imperative was the principal driving force that shaped the Hong Kong stamp duty system.

3.4 Social imperatives

The analysis of Hong Kong Stamp duty history presented above emphatically demonstrates that the fundamental driver of reform and change that shaped the Hong Kong stamp duty law was the financial imperative to relieve the colony's various and successive fiscal exigencies. Revenue generation was by far the most important factor and underlay most reforms and amendments to the Hong Kong stamp duty law. This section continues to assess whether there were other important imperatives that moulded the form and nature of the stamp duty law. It explores the extent to which social changes, as well as the demand for social welfare policies, were also primary drivers for stamp duty reforms and amendments. After establishing the social imperatives that shaped the stamp duty law, this section assesses the relative success of the measures implemented by the Hong Kong government to fulfil these social demands.

⁸¹⁵ See generally Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 175–79.

3.4.1 The issue of *mui-tsai*

It has been seen that the government of Hong Kong was not committed to providing welfare or promoting social policies in the nineteenth century, and that this lack of interest had a consequential influence on stamp duty legislation.⁸¹⁶

There is some evidence, however, that there was one clear attempt by the Hong Kong government to deal with social issues via the stamp duty system in 1884. Certainly, the major, if unacknowledged, objective of the 1884 reform was to collect additional revenue.⁸¹⁷ Nevertheless, it had a secondary less discernible social objective.

There was an issue of *mui-tsai* – ‘little sisters’. In the nineteenth century, many Chinese girls and women in Hong Kong were *mui-tsai* who had been sold to wealthier families through an intermediary known as a pocket mother. This practice helped poor families find better homes for their daughters, while providing domestic help for wealthier families. In October 1879, Hong Kong Chief Justice Sir John Smale (in office 1866–1881) condemned the *mui-tsai* practice as violating British as well as Hong Kong law prohibiting slavery. Smale’s attack caused a stir among the Chinese community. They felt that Smale had unnecessarily condemned a time-honoured Chinese custom.⁸¹⁸ To the Chinese, *mui-tsai* were half servant, half family member. Also, there was a powerful custom that required the master to find a husband for the servant girl when she was of age, and the moment she was married she was free forever. This distinguished the practice from slavery.⁸¹⁹ To the British, it was unnatural that young girls should be sold into domestic servitude and they wanted to stop the practice. However due to immense pressure from the wealthy Chinese community, the Colonial Office decided that the only thing necessary was to ensure that *mui-tsai* were not being sold into prostitution and passed an Ordinance to this effect in 1887.⁸²⁰

⁸¹⁶ See section 2.2.3.

⁸¹⁷ See section 3.3.3.

⁸¹⁸ John M Carroll, *A Concise History of Hong Kong* (Hong Kong, Hong Kong University Press 2007), 58–60.

⁸¹⁹ *Hong Kong Government Gazette*, ‘Domestic Servitude in Hong Kong, Government Notification No 28’ (Hong Kong Government 4 February 1880).

⁸²⁰ An Ordinance for the better protection of young girls, No 9 of 1887.

All the newly added chargeable instruments in the Hong Kong Stamp Ordinance 1884 were found in the British Stamp Act 1870⁸²¹ except for the servant security bonds.⁸²² Servant security bonds were instruments peculiar to Hong Kong. It was specified under the head of servant security bonds that stamp duty would be levied on instruments entered into by domestic servants wherein they gave a security for the due discharge of their duties. While this was probably enacted for revenue purposes, from another perspective, the application of tax provisions to domestic servants, defining them by reference to the need for servants to give a security, distinguished the profession from the controversial Chinese *mui-tsai* domestic servitude. Unlike *mui-tsai* whose rights were permanently transferred for a payment, domestic servants were under an employment contract for a fixed period of time. The stamp duty law reinforced the British view that *mui-tsai* were illegal and should not be recognised by the Hong Kong government. The education effect emanating from the stamp duty law was not great. The Chinese subsequently protested vehemently when Winston Churchill, the Secretary of State for the Colonies in 1922, made the order to terminate the *mui-tsai* practice in Hong Kong around forty years from the promulgation of the Hong Kong Stamp Ordinance 1884.⁸²³

3.4.2 Opium

At the turn of the twentieth century, there is evidence demonstrating that social changes occurring in China materially affected the progression of the Hong Kong stamp duty regime.

In 1906, Emperor Kwang Hsu of the Imperial Qing Court set about reform, issuing an edict requiring all his subjects within China to quit opium smoking. The Emperor gave his people ten years from 1907 to break the habit.⁸²⁴ Kwang Hsu wanted to end the evil of the opium trade. This edict was similar in principle to the edict issued by Emperor Dao Guang of the Imperial Qing Court to end the opium trade in 1838, which triggered the First Opium War and the cession of Hong Kong.⁸²⁵ In 1906, the British response was very different from seventy

⁸²¹ 33 & 34 Vict c 97.

⁸²² See Appendix I.

⁸²³ Frank Welsh, *A History of Hong Kong* (London, Harper Collins 1997), 395–96.

⁸²⁴ Geoffrey Robley Sayer, *Hong Kong, 1862–1919: Years of Discretion* (Hong Kong, Hong Kong University Press 1975), 100.

⁸²⁵ John M Carroll, *A Concise History of Hong Kong* (Hong Kong, Hong Kong University Press 2007), 14–16.

years before. The British and the Qing governments concluded that Britain would reduce the export of raw opium to China by one-tenth annually beginning on 1 January 1908 so that the opium trade would cease automatically on 31 December 1917. This result was in line with the vote of the British House of Commons in 1891, condemning the opium trade. At the same time, the British government's wish was made very clear to the Hong Kong government via a telegram on 6 May 1908, instructing that public opium smoking would no longer be countenanced in Hong Kong. All opium divans in the colony had to be closed by 1910.⁸²⁶

In light of the new opium policy, inevitably the Hong Kong government's revenue would be reduced in gradual steps until the opium trade with China ceased in 1917. The fiscal impact on the Hong Kong government was substantial. To illustrate, opium-related revenue was HK\$2,041,990 and HK\$1,551,930 in the years 1906 and 1907 respectively, representing 40.9% and 32.8%, respectively, of the annual income of the Hong Kong government.⁸²⁷

In 1909, raising revenue to restore the fiscal balance was the main task of Governor Sir Frederick Lugard (in office 1907–1912). Before 1909, most of the Hong Kong Governors made use of stamp duty to ease financial imperatives. Unlike them, Lugard focused on other possible revenue sources. The investigation looks into how the associated social factors prevented Lugard from relying on stamp duty exclusively.

The historical evidence suggests that a comprehensive stamp duty increment was shunned in 1909 to preserve the sustainability of the stamp duty system. Most of the prescribed stamp duty rates were already at their saturation points in 1909 and any further increase would have been socially undesirable. It was not possible for the Governor to effect a comprehensive increment to all heads of charge even during the severe 1909 revenue exigencies as the tax rates had previously been doubled or trebled as recently as 1902. In any case, there was

⁸²⁶ Hong Kong Hansard 24 September 1908, 116; Geoffrey Robley Sayer, *Hong Kong, 1862–1919: Years of Discretion* (Hong Kong, Hong Kong University Press 1975), 100.

⁸²⁷ Hong Kong Government, 'Hong Kong Blue Book 1907' (Hong Kong, Hong Kong Government Printer, 1908), c6.

no point in doing so, as a similar exercise in 1902 was proven a fiscal failure.⁸²⁸ If the stamp duty rates were to be augmented across the board again, there would be a chance that the successful duty might fail. The resulting unreasonable rates could lead to deliberate tax evasion as more taxpayers began to show little respect for the stamp duty system. More alarmingly, any further increase could trigger taxpayer discontent and threaten social unrest. Similarly, Lugard was prevented from increasing property rates in the colony, hitherto the only other form of taxation. Murray Stewart, a Legislative Council unofficial member, warned the colonial government after the announcement of the British government's decision to curtail opium traffic: 'We believe that to raise the rates on property at the present time would be little short of disastrous.'

Following the development of the 1909 social constraints to inhibit the use of stamp duty to substantially enhance revenue, Lugard needed to search for another viable form of taxation to restore fiscal balance and to prevent further over-loading the stamp duty system. Lugard introduced import duties on liquors in 1909.⁸²⁹ It will be recalled that a proposal for liquor duties in 1846 led to vehement protests from the business community on the basis that import duties would be contrary to the proclamation of Hong Kong as a free port. The incident facilitated the introduction of stamp duty in Hong Kong.⁸³⁰ Sixty years after that disapproval of import duties in Hong Kong, the perceived saturation of stamp duty rates in turn facilitated the establishment of an import duties system in Hong Kong. After liquors, the colonial government added tobaccos and perfumes to the import duties system as a substitute for opium revenue.

Lugard, however, did look to the stamp duty.⁸³¹ He introduced the Hong Kong Stamp Amendment Ordinance 1909⁸³² with the sole object of increasing stamp duty revenue.⁸³³ These were partial amendments made to the stamp duty structure as well as the mechanism. His aim for the Ordinance was to 'ensure a more complete and thorough collection' which would bring 'stamp duty

⁸²⁸ See section 3.3.6.

⁸²⁹ Hong Kong Hansard 10 September 1909, 94.

⁸³⁰ See section 2.1.1.

⁸³¹ See section 3.3.4.

⁸³² No 19 of 1909.

⁸³³ Letter from Frederick Lugard to Robert Crewe-Milnes (18 July 1909), CO129/357, 119.

collection up to the same total' as the previous year owing to his prediction that there would be depressed trade as a result of the decrease in opium traffic.⁸³⁴ He did not aim to exceed the previous year's collection, due to social constraints.

The change in the social attitude towards the opium trade continued to have an impact on the progression of Hong Kong stamp duty development. It is submitted that the British government's determination to curtail the opium trade was the key social imperative that triggered financial exigency, ultimately leading to the introduction of the Hong Kong Stamp Amendment Ordinance 1921.⁸³⁵

3.4.3 Inter-war period

The inter-war period saw a greater interest in social legislation and welfare because of similar developments in Britain where laissez-faire economics was losing ground to the welfare state ideal.⁸³⁶ Still, Hong Kong was far from being a welfare state at any moment during Britain's rule. 'Even at its mightiest', wrote historian David Faure, 'Britain had no social policy on Hong Kong as such.'⁸³⁷ The review of stamp duty history during this period indicates the attitudes of the British officials in Hong Kong were nevertheless influenced by developments in Britain and they tried to take a more active role in relieving hardship. Some of the minor partial stamp duty amendments after 1921 reflected this stage of social development in Hong Kong. An example was the promulgation of the Hong Kong Stamp Amendment Ordinance 1929⁸³⁸ which relieved hardship by lowering the tax rates for instruments of apprenticeship, surrender of leases and so on.⁸³⁹

3.4.4 British Military Administration's pragmatic stamp duty proclamation

The demand for social stability immediately after the World War II to permit the British government to retain control of Hong Kong had significant influence on

⁸³⁴ Hong Kong Hansard 24 September 1908, 124.

⁸³⁵ See section 3.3.6.

⁸³⁶ John M Carroll, *A Concise History of Hong Kong* (Hong Kong, Hong Kong University Press 2007), 107.

⁸³⁷ David Faure, *A Documentary History of Hong Kong: Society* (Hong Kong, Hong Kong University Press 1997), 1.

⁸³⁸ No 26 of 1929.

⁸³⁹ Hong Kong Stamp Amendment Ordinance, No 26 of 1929, ss 7–12; Letter from Cecil Clementi to Sidney Webb (23 December 1929), CO129/522, 15–17.

Hong Kong's stamp duty policies. This social imperative was not expressed but the investigation of the historical circumstances surrounding the promulgation of the stamp duty law immediately after the World War II implies its presence.

The Japanese occupied Hong Kong during 1941–1945. Immediately after the British re-occupation in 1945, the straightforward change was to repeal the Japanese stamp duty system completely and to re-establish the British Hong Kong stamp duty regulation.⁸⁴⁰ Further the British Military Administration (BMA) also issued a special stamp duty proclamation.

This section examines the social reasons why the Hong Kong government did not retain any of the Japanese stamp duty regulations.⁸⁴¹ It also critically reviews the proclamation to identify the hidden social objective it was seeking. In the process, this section provides an interpretation as to whether the proclamation on stamp duty was successful in meeting its pre-determined objective.

An appraisal of the associated circumstances identifies the reasons why the Japanese stamp duty system was discarded completely. Initially, this was probably due to the relatively short period of military occupation.⁸⁴² Another reason was the British revenue structure was likely to be superior to the Japanese system. The evidence to support this assertion is General Douglas MacArthur's⁸⁴³ 1947 observation of the Japanese tax system as largely arbitrary and inefficient.⁸⁴⁴ In any event, to prevent further blemish to the pride of the

⁸⁴⁰ By virtue of the British Military Administration of Hong Kong Proclamation No 1, 1 September 1945, the Hong Kong Stamp Duties Management Ordinance, No 35 of 1911 and Hong Kong Stamp Ordinance, No 8 of 1921 were reinstated.

⁸⁴¹ Gunseika no Honkon 香港占領地總督部報道部, *Shinseisita Dai Tōa no Chūkaku 軍政下の香港: 新生した大東亞の中核* [Hong Kong under Japanese Military Administration] (Honkon Senryōchi Sōtokubu Hōdōbu Kanshū ed, Honkon, Honkon Tōyō Keizaisha 1944), 194. From the military records written in Japanese, it was revealed that the stamp duty system adopted by the Japanese military government in Hong Kong was based on the Japanese stamp duty law issued during Showa 17 (1942). The tax was levied on certificates and written statements with tax rates similar to those imposed by the Japanese government in Japan.

⁸⁴² This can be compared to the Japanese colonisation of Taiwan from 1895 to 1945 in which pre-World War II Japanese law retained influence even during modern times in Taiwan. See Fa Lo Chang, *The Legal Culture and System of Taiwan* (The Netherlands, Kluwer Law International 2006), 3.

⁸⁴³ The Supreme Commander of the Allied Powers stationed in Tokyo.

⁸⁴⁴ General Douglas MacArthur was of the opinion the entire Japanese tax system was incompetent, and in order to ensure that Japan became a great democratic power in a few decades, it was necessary to create and operate a sound tax system for Japanese purposes.

British Empire, the British would not permit the use of Japanese law in their overseas territories.⁸⁴⁵

Despite revoking the Japanese revenue system, the BMA proclaimed that since the Japanese military government imposed stamp duty in Hong Kong during the occupation, it would be inequitable to charge stamp duty again on those assignments executed by the Japanese Registration Office, where fresh registrations were necessary under the British forms and language following the re-occupation. In other words, property transactions executed by the enemy's registration office and the related stamp duties duly paid to the enemy's administration, would be respected.⁸⁴⁶

An investigation into the stamp duty policy reveals that restoring equity might not be the only reason for its enactment. There were other unarticulated social reasons behind the formulation of the policy. The British re-occupation of Hong Kong was not without serious challenge. The Hong Kong Chinese residents were in doubt as to the legitimacy of the continued British rule in the wake of the rise of Chinese nationalism as well as the Japanese humiliation of the British Empire by defeating it totally in Asia. These factors gave rise to anti-British riots in 1945.⁸⁴⁷ The Chinese Kuomintang government was constantly looking for justification to recapture Hong Kong.⁸⁴⁸ The United States, the leader of the Allied power, was anti-colonial by tradition and advocated that Hong Kong should be returned to the Chinese Kuomintang government.⁸⁴⁹ Civil unrest in Hong Kong would be a good cause for reversion of sovereignty.

Accordingly, MacArthur brought in a tax mission in 1948 led by Carl S Shoup, Professor Emeritus of Columbia University, to review the Japanese tax system. The mission recommended the Japanese government to repeal its stamp duty system. See Carl S Shoup, 'The Tax Mission to Japan' in Malcolm Gills (ed), *Tax Reforms in Developing Countries* (Durham, Duke University Press 1989), 177.

⁸⁴⁵ British Military Administration of Hong Kong Proclamation No 1, 1 September 1945, Article 4. All proclamations, enactments and orders made by the sanction of any Japanese authority during the period of Japanese occupation, were abolished except where revived by the British Military Administration.

⁸⁴⁶ British Military Administration of Hong Kong Proclamation No 1, 1 September 1945, Article 3(B).

⁸⁴⁷ Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 142.

⁸⁴⁸ John M Carroll, *A Concise History of Hong Kong* (Hong Kong, Hong Kong University Press 2007), 129.

⁸⁴⁹ G B Endacott, *Government and People in Hong Kong, 1841–1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 180.

The analysis of Hong Kong's prevailing civil conditions justified the BMA's stamp duty proclamation to avert further resentment from the Chinese inhabitants as well as to re-build their confidence in the colonial administration. This was to promote stability to ensure Britain could retain control of Hong Kong. The BMA's pragmatism as displayed on stamp duty policy formulation contributed to the speedy⁸⁵⁰ recovery of Hong Kong.

3.4.5 Stamp duty policy to encourage entry level private home ownerships

It can be recalled that the primary objective of the 1866 introduction of stamp duty to Hong Kong was to enhance revenue but also with an expressed secondary objective to improve living standards.⁸⁵¹ It took one hundred years of development for another commendable social engineering objective to emerge in Hong Kong and in consequence, sculpted the stamp duty legislation. This time, the social imperative took centre stage and became the primary impetus for the stamp duty development.

Investigation of the Hong Kong Stamp Amendment Ordinance 1967⁸⁵² reveals that its sole objective was to encourage private home ownership. This section reviews the reasons behind the policy implementation, and the consequent examination exposes why the British stamp duty tenet under similar circumstances was not followed, and what lessons were learned. In addition, the section deal with whether the stamp duty policy promulgated was fruitful in advancing the pre-determined social objective. Lastly, it reveals that the implementation of the 1967 stamp policy engendered certain undesirable complications that survived until the present day, becoming entrenched in the system even when the original historical reason for their existence had been invalidated.

The method prescribed by Financial Secretary John Cowperthwaite (in office 1961–1971) to achieve the pre-determined social objective was to give stamp duty concessions to 'cheaper kind of flats to which ordinary citizen can

⁸⁵⁰ John M Carroll, *A Concise History of Hong Kong* (Hong Kong, Hong Kong University Press 2007), 129. By early 1946 trade had returned to 60% of its pre-war level and civil government was restored on 1 May 1946, just eight months after the Japanese surrendered.

⁸⁵¹ See section 2.1.2.

⁸⁵² No 28 of 1967.

aspire'.⁸⁵³ In the process, the law had the perceived effect of encouraging private developers to provide housing within the means of the ordinary people.⁸⁵⁴ With the increase in homeowners and the supply of entry-level private flats, the government visualised stabilisation of residential rental values. The policy aimed to solve the social problem of rising rentals in the tight accommodation situation at that time. In turn, it was expected to reduce the stress imposed on the demand for public housing. The concession was estimated to reduce the revenue collection by some HK\$5 million.⁸⁵⁵

It was found that this social objective was similar to that originated by the British government in 1963 in Britain.⁸⁵⁶ Under the British Finance Act 1963, it was provided that conveyances for land under £30,000 were exempted from stamp duty.⁸⁵⁷ Contrasting with the British practice, Hong Kong did not imitate the British relief en masse. The Hong Kong concession put forward by Cowperthwaite was in the form of reduced stamp duty rates instead of total exemption for conveyances under a certain threshold. This directed the examination of the reasons the British initiative was not followed.

Through reviewing the Hong Kong legislative record, it was discovered that Cowperthwaite did consider granting a stamp duty exemption on properties under a certain value, as practised in Britain in the 1960s.⁸⁵⁸ Nevertheless, he decided against it, saying:

Although I spoke at the time of the budget of making conveyances under HK\$20,000 free of duty, further consideration has suggested that such conveyances should continue to be stampable and should not be stamped completely free. This is because special arrangements will be necessary to administer the concessionary

⁸⁵³ Per John Cowperthwaite, Hong Kong Hansard 1 March 1967, 92.

⁸⁵⁴ Per Li Fook Shu, Hong Kong Hansard 15 March 1967, 126.

⁸⁵⁵ Per John Cowperthwaite, Hong Kong Hansard 1 March 1967, 93.

⁸⁵⁶ John Cowperthwaite informed the Legislative Council that to give a measure of relief from stamp duty to encourage home ownership was effected in Britain a few years before. See Hong Kong Hansard 1 March 1967, 92.

⁸⁵⁷ Finance Act 1963, s 55.

⁸⁵⁸ Apparently, Cowperthwaite disclosed his original intention was to render properties under HK\$20,000 to be stamp duty free during the 1967 Hong Kong budget speech. See Hong Kong Hansard 1 March 1967, 92–93.

rates and care will have to be taken to prevent their abuse; and these arrangements will add to the cost of the Stamp Office.⁸⁵⁹

The analysis of Cowperthwaite's speech revealed an important point that was articulated obliquely by him. If provisions similar to those used in Britain were introduced, taxpayers might defraud the revenue by breaking up the conveyances into smaller separate parts with values set below the exemption threshold and thus go unnoticed by the Stamp Office since no documents were required to be submitted for stamping. It would involve significant expenditure to prevent the undesirable erosion of revenue. As such, Cowperthwaite insisted that a symbolic tax at a flat rate of HK\$20 was to be collected for conveyances under HK\$20,000.⁸⁶⁰ In this way, the Stamp Office would be informed of all conveyances on sale in the first instance and provide an opportunity to scrutinise the transactions.

In addition, the 1967 legislation also instigated a stepped rate system, coupled with the concept of marginal relief where the consideration marginally exceeds the HK\$20,000 or HK\$40,000 levels, to achieve the social objective. This is rightfully classified as *ad valorem* (standard rate with static percentage and progressive percentage basis).⁸⁶¹

The following table illustrates the concepts and reveals the maximum savings in stamp duty as allowed by the 1967 legislation:

⁸⁵⁹ Hong Kong Hansard 26 April 1967, 293.

⁸⁶⁰ The applicable rate was set at HK\$1 for every HK\$100 or part thereof of the consideration under the Hong Kong Stamp Ordinance, No 8 of 1921. It was increased to HK\$2 for every HK\$100 or part thereof of the consideration via the Hong Kong Stamp amendment Ordinance, No 46 of 1948.

⁸⁶¹ See section 2.3.5.

Table 3.5: Analysis of 1967 stamp duty marginal relief for conveyances

Consideration (HK\$)	Stamp duty rates (HK\$)	Maximum duties payable under the 1967 relief (HK\$)	Maximum duties payable prior to the 1967 relief (HK\$)	Maximum savings in stamp duty (HK\$)
1–20,000	20	20.00	400.00	380.00
20,001–20,180	20 plus the amount exceeding 20,000	200.00	403.60	203.60
20,181–40,000	1 for every 100	400.00	800.00	400.00
40,401 onward	2 for every 100	N/A	N/A	N/A

The table shows that the stamp duty for property with a consideration of HK\$20,000 or below may be reduced from HK\$400 to HK\$20, a fall of HK\$380 (or 95%) in stamp duty collected.

The substantial drop in stamp duty rates brought about by the 1967 stamp amendment was successful in encouraging more lower-income earners to become owners of private housing. The Commissioner for Rating and Valuation revealed a year later that ‘the first effects had been favourable in encouraging persons of moderate means to buy their own properties.’⁸⁶² Further, the Hong Kong government continued to positively adjust the relief in stamp duties for conveyances of low-valued properties during the 1970s to further enhance the

⁸⁶² Per Derek Jones (Acting Hong Kong Financial Secretary), Hong Kong Hansard 23 May 1973, 821.

desirability of home ownership,⁸⁶³ demonstrating that the government perceived the actual outcomes to be encouraging.

Cowperthwaite did not explain the basis for how he derived the complicated 1967 marginal relief formula in the Legislative Council meetings. It was likely that he had done it arbitrarily. Yet, it was certain that his intention was to give an additional incentive to home ownership. It can be concluded that, in order to achieve the pre-set social imperative, Cowperthwaite enhanced the equity of the scheme by sacrificing simplicity. The marginal relief system has been retained in the modern Hong Kong stamp duty structure. Whilst the formulation evolved with increasing complexity, it has survived and become so ingrained in the system that the original historical reason for its existence has long been forgotten. Future stamp duty reform may consider doing away with the marginal relief system. Nevertheless, marginal relief still has its merit in that it avoids a sharp rise in the stamp duty when the value of the property shifts into the next band of a higher stamp duty rate. The abolition of the marginal relief needs to be handled very carefully so as to avoid occasioning undesirable social impacts.

3.4.6 Stamp duty changes to support Britain's secret mission

Another striking social imperative to stamp duty reform occurred in the latter half of the twentieth century. After World War II, Britain established its own welfare state.⁸⁶⁴ The colonial government was indifferent to this proposal, even though it had been asked to follow the British lead.⁸⁶⁵ The Hong Kong government tried to spend as little as possible on welfare and social services. The real breakthrough came when Governor Sir Murray MacLehose took office (in office 1971–1982). Unlike his predecessors, he found the idea of welfare appealing as long as it was viable and not being abused. He pioneered massive public housing projects, free primary school education, underground mass transit railway construction, huge country parks projects, public welfare services and

⁸⁶³ Per Philip Haddon-Cave, Hong Kong Hansard 28 February 1973, 488; Hong Kong Stamp Amendment Ordinance, No 41 of 1973, s 12(e).

⁸⁶⁴ Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 175–76.

⁸⁶⁵ *Ibid* 166.

public assistance.⁸⁶⁶ The local residents found him and his new Hong Kong ‘too good to be true’.⁸⁶⁷ From every angle, MacLehose was a kind and capable Governor who cared about the rights and welfare of the local people that he governed.

Yet, there might have been a clandestine reason for the change in governing style pioneered by him. From a hitherto secret document released to the public from the British National Archives on 1 January 2002, it was found that, before MacLehose took up governorship, he had been entrusted with a secret mission that was only known to himself and no one else in Hong Kong.⁸⁶⁸ In short, he was required to prescribe policies to ensure that Hong Kong’s development in all areas would far exceed parallel developments in Mainland China. This was to increase the bargaining power of the British government with the Chinese government in negotiating the future of Hong Kong which was an important focus around ten years after MacLehose’s arrival.

The evidence collected in this section was intended to ascertain whether MacLehose had initiated stamp duty changes to accomplish his secret mission. If that is determined in the affirmative, to then decide whether the related stamp duty changes were effective in causing constructive social development to arise which attracted the respect of the Hong Kong people and the rest of the world.

MacLehose’s Financial Secretary, Philip Haddon-Cave (in office 1971–1981) spelled out the government’s vision for tax reform as:

Changes designed either to make the burden of the system of taxes and levies more equitable, *or* to simplify the administration of the laws under which these taxes and levies are raised, *or* to increase the efficiency of their administration

⁸⁶⁶ David Faure, *A Documentary History of Hong Kong: Society* (Hong Kong, Hong Kong University Press 1997, 300–307; Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 161.

⁸⁶⁷ John M Carroll, *A Concise History of Hong Kong* (Hong Kong, Hong Kong University Press 2007), 161.

⁸⁶⁸ Guideline for the Governor of Hong Kong, Sir Murray MacLehose, 18 October 1971, FCO 40/329; P K Li 李彭廣, *Guan Zhi Xianggang: Yingguo Jie Mi Dang An De Qi Shi* 管治香港：英國解密檔案的啟示 [*Governing Hong Kong Insights from the British Declassified Files*] (Hong Kong, Oxford University Press 2012), 21.

in the sense that higher yields are derived from the same rates of charge.⁸⁶⁹

From Haddon–Cave’s point of view, it can be inferred that during the 1970s, MacLehose’s government would refrain from introducing tax reforms or amendments that were viewed as solely instigated for the purpose of extracting revenue. To go one step further, Haddon-Cave announced the government’s self-induced desirability of affording relief ‘in particular circumstances to a particular class of taxpayers’.⁸⁷⁰

In accord with the new benevolent philosophy, the Hong Kong Stamp Duty Amendment Ordinance 1973⁸⁷¹ deleted the following instruments from the stamp duty structure: affidavits,⁸⁷² agreements, agreements for hire purchase, attested copies, bills of lading, charter parties, godown warrants, import or export declarations, letters of hypothecation, notarial acts, notes of protest of a bill of exchange, policies of insurance, receipts and shipper books (Chinese).⁸⁷³

Investigation revealed that the basis for identifying the deleted items was founded on two criteria: whether the duty was irksome to the public and/or Stamp Office; and, whether the revenue yield insignificant and/or declining.⁸⁷⁴

The study of the history of Hong Kong stamp duty from its beginning in 1866 reveals that the colonial government neither gave up its revenue sources lightly, nor readily afforded relief. There was an abrupt change of attitude in the 1970s to move towards popularity engineering by doing both. The changes coincided with the MacLehose secret mission on behalf of Britain. It was a strong indicator that there was a co-relationship between the secret mission and the 1973 stamp duty changes.

⁸⁶⁹ Hong Kong Hansard 28 February 1973, 482.

⁸⁷⁰ Ibid 480.

⁸⁷¹ No 41 of 1973; see Appendix V.

⁸⁷² Affidavits were written sworn statements of fact.

⁸⁷³ Hong Kong Stamp Amendment Ordinance, No 41 of 1973, s 12(a)–(c); see Appendix V.

⁸⁷⁴ Per Philip Haddon-Cave, Hong Kong Hansard 28 February 1973, 489; Per Philip Haddon-Cave, Hong Kong Hansard 28 March 1973; Hong Kong Stamp Amendment Ordinance, No 41 of 1973, s 12.

The Commissioner of Inland Revenue reported a year later that the public welcomed the policy of abolition of minor duties. He reported that the policy also relieved the Stamp Office of a considerable administrative burden and enabled it to render a quicker and more efficient service in other directions.⁸⁷⁵ This indicates that the stamp duty policies of MacLehose's government were successful socially and won the respect of the local people that it governed.

3.4.7 Hong Kong brain drain and stamp duty policy

A further modern key social imperative shaping the Hong Kong Stamp Duty occurred as late as the final decade of the twentieth century, and is revealed by the introduction of four Hong Kong Stamp Duty Amendment Ordinances during the ten year period from 1988–1997.

Financial Secretary Piers Jacobs (in office 1986–1991) announced in his 1988 budget speech that the Hong Kong government would provide a stamp duty concession. He announced that the concession was designed to facilitate wider home ownership and assist the middle-income group to acquire property.⁸⁷⁶ Based on the successful stamp duty experience gained in encouraging lower income community private home ownership, he reduced the stamp duty rates applicable to small and medium-sized properties.⁸⁷⁷ In addition, he also introduced a new formula for determining marginal relief, which would provide a greater benefit to duty payers and have the effect of pushing the various duty rate thresholds upward.⁸⁷⁸

Compared with those Hong Kong stamp duty amendments that were effected in the 1960s and 1970s to encourage lower income community home ownership, the major difference in the 1988 stamp legislation was the insertion of the middle income group under the umbrella of stamp duty home ownership concession. Jacobs did not attempt to explain the principal imperative behind his revenue contractionary stamp duty policy during the legislative process of

⁸⁷⁵ Per Derek Jones (Acting Hong Kong Financial Secretary), Hong Kong Hansard 23 May 1973, 821.

⁸⁷⁶ Hong Kong Hansard 2 March 1988, 813–14.

⁸⁷⁷ With effect from 1 April 1988, the 1988 Stamp Duty Amendment Ordinance lifted the threshold at which the top rate of 2.75% began to apply from the previous conveyance value of HK\$500,000, to HK\$1.5 million. Further, it cut the rate of duty for properties costing between HK\$250,000 and HK\$1.5 million. See Hong Kong Stamp Duty Amendment Ordinance, No 29 of 1988, s 2.

⁸⁷⁸ Hong Kong Stamp Duty Amendment Ordinance, No 29 of 1988, s 2.

the 1988 Stamp Ordinance, which he estimated would cost the government HK\$300 million in the fiscal year 1988/89, benefiting 100,000 people.⁸⁷⁹

Investigation into the historical circumstances suggests that the pressing social problem of ‘brain drain’ from Hong Kong, apparent following the 1984 conclusion of the Sino-British Joint Declaration, shaped the Hong Kong Stamp Ordinance of 1988. The brain drain refers to the abnormal increase in the number of Hong Kong residents emigrating due to uncertainty about the future of Hong Kong under a communist China regime after 1997. These emigrants included skilled professionals, technologists, supervisors, managers, sales and marketing specialists, the retention of whom was considered important to the sustainability of Hong Kong’s success beyond 1997.

Remarks by Governor Sir David Wilson (in office 1987–1992) in his 1988 Legislative Council address indicated that the government was keen to prescribe policies to tackle the brain drain predicament:

The more we do to make Hong Kong a better place to live in, by maintaining our buoyant economy, by improving education, housing, the environment and the quality of life, the less likely people are to want to cut themselves off from their roots and leave this remarkable territory to which they are so deeply – and rightly – attached.⁸⁸⁰

Although unannounced by Jacobs when he piloted the 1988 Hong Kong Stamp Amendment Ordinance in the Legislative Council, the evidence collected shows that there was a nexus between the social imperative of preventing brain drain and the 1988 stamp duty legislation of offering concessions to middle class home buyers which enabled them to maintain a standard of housing which was appropriate to their career status.

Perhaps the conclusive evidence to support this deduction was found in the remark by a Chinese Legislative Council unofficial member, Dr Ho Kam-Fei (in office 1978–1988), appraising the government’s introduction of the 1988 Hong

⁸⁷⁹ Per Piers Jacobs, Hong Kong Hansard 2 March 1988, 813–14.

⁸⁸⁰ Hong Kong Hansard 12 October 1988, para 199.

Kong Stamp Amendment Ordinance.⁸⁸¹ He commented on the effect of the reduced rates of stamp duty on properties to facilitate the middle-income earners to purchase their own home: 'Home-ownership would certainly strengthen a sense of belonging, which would, in turn, act as a hedge against the brain drain. This group of home-buyers would consist largely of professionals and technologists and constitute the mainspring of our economy.'⁸⁸²

It can be deduced that the government found the concession fruitful in achieving its aforementioned social agenda, as it subsequently introduced over the next ten years, three more pieces of similar revenue contractionary stamp duty legislation consistent with the predominant social impetus.⁸⁸³ This class of stamp duty law definitely did not have a predominant financial objective; so much is evident from the observation that these initiatives cost the Hong Kong government billions of Hong Kong dollars from 1988 to 1997.⁸⁸⁴

3.4.8 The relative importance of social imperatives in driving Hong Kong stamp duty development

The analysis of Hong Kong stamp duty history validates that the most powerful imperative driving the development of stamp duty law was financial. However, other considerations were not totally ignored. The examination of the evidence shows that various social imperatives also caused or inhibited changes to the stamp duty system. It is inferred that the social imperative was the second most influential driving force that shaped the Hong Kong stamp duty system. Three principal reasons stand out.

First, during the nineteenth century, a few and highly specific social reasons were already playing a part in shaping the stamp duty law. The increasing importance of such social considerations in formulating stamp duty law became more apparent after the World War II, emerging as a prominent consideration sparked off by MacLehose taking office as Hong Kong Governor. Nonetheless,

⁸⁸¹ No 29 of 1988.

⁸⁸² Hong Kong Hansard 20 April 1988, 1108.

⁸⁸³ 1994 Hong Kong Stamp Amendment Ordinance, No 36 of 1994; 1996 Hong Kong Stamp Amendment Ordinance, No 28 of 1996; 1997 Hong Kong Stamp Amendment Ordinance, No 43 of 1997.

⁸⁸⁴ Per Kwong Ki-Chi, Hong Kong Hansard 27 April 1994, 3373.

as a whole, the number of instances of Hong Kong introducing stamp duty legislation in response to a social impellent, were far less than initiatives linked to a financial imperative. However, the frequency was higher than those initiatives linked to an economic imperative.⁸⁸⁵

Second, the stamp duty system was used as a major tool in attaining social objectives during the 1960s until the end of British rule in 1997. The evidence collected confirms that social imperatives even surpassed revenue collection considerations in moulding the stamp duty system during the last few decades of British administration in Hong Kong. As an illustration, the government adhered to the tenet of abolition of cumbersome duties and stamp duty law which was sparked off by MacLehose's government in the 1970s. The evidence demonstrates that resulting stamp duty law had significant lasting impact on the Hong Kong stamp duty system development. Stamp duty law introduced in response to economic imperatives only started to have a significant impact from 1979 onwards.⁸⁸⁶

Third, the earlier stamp duty provisions enacted in response to social imperatives were mostly out-dated and repealed. Nevertheless, the stamp duty changes introduced between 1960s and 1990s to pursue social objectives are still retained in the current Hong Kong stamp duty system. It is submitted that stamp duty changes introduced from 1979 onwards, in response to economic impellents, scored similarly on this ranking factor.⁸⁸⁷

3.5 Economic imperatives

So far, the analysis of Hong Kong stamp duty history shows that financial imperatives were the most important underlying nearly all stamp duty reforms and amendments in the first 110 years of the Hong Kong stamp duty history. Social imperatives formed the next important group of drivers in the development of Hong Kong stamp duty. This section turns to an assessment as to whether a third possible class of imperatives, those of an economic nature, also drove the development of the Hong Kong stamp duty regime. The aim is to assess to what extent the stamp duty law promulgated by government was

⁸⁸⁵ See section 3.5.

⁸⁸⁶ Ibid.

⁸⁸⁷ Ibid.

intended to stimulate economic growth, and whether any Hong Kong stamp duty policy impeded economic growth.

A growing and buoyant economy usually leads to a growth in stamp duty yields as most of the related chargeable instruments are linked to commercial activities. In this light, distinguishing financial imperatives from economic imperatives, is difficult. Hence there is a need for appropriate and distinctive definitions. This study distinguishes the economic imperatives from the financial imperatives by stressing the structural nature of the economic, whereas the financial have more to do with the conduct, or performance, of the stamp duty legislation in yielding revenue.

3.5.1 Non-protectionist tax policy confirmed

The 1888 Stamp Duty Bill had a clear economic agenda. The 1888 Bill to amend Hong Kong Stamp Ordinance, proposed by Governor Sir William Des Voeux (in office 1887–1891), was not accepted by the Colonial Office. In examining why the Bill was rejected, it was established that the British government deemed non-protectionist stamp duty policies as the guiding principle for Hong Kong in 1888. Successive Hong Kong revenue law legislators have in varying degrees followed that tradition until the present day. This section analyses why the British government chose the non-protectionist stamp duty path for Hong Kong, by examining the associated economic factors. In addition, the study also considers whether the chosen policy was beneficial to Hong Kong's economy in the long run.

In 1888, the applicable stamp duty fixed rate for fire insurance policies was HK10¢ per policy. The 1888 Bill was introduced to amend the duties on fire insurance, as follows:

1. If issued by a company registered in the colony: HK10¢ per policy;
2. If issued by any other company, to be charged on the premium paid: HK50¢ on every HK\$10 or part thereof up to HK\$100 and HK\$5 on every succeeding HK\$100 or part thereof.⁸⁸⁸

⁸⁸⁸ Bill to amend Hong Kong Stamp Ordinance, 1888, s 1.

The Bill was read a second time, with no opposition,⁸⁸⁹ in the Hong Kong Legislative Council. It can be concluded from the above that the Hong Kong government tried to launch an interventionist tax policy to encourage people to purchase fire insurance from local companies instead of from foreign insurance companies. The principal argument in support of the law was that local insurance companies would be heavily taxed if their business transactions occurred elsewhere; for example in Calcutta and Madras.⁸⁹⁰ Thus, it was fair that Hong Kong should impose a higher tax on fire insurance policies concluded by foreign insurance companies. In the words of a famous British economist, Joan Robinson: 'It was just as sensible to drop rocks in our harbours as other nations had rocky coasts.'⁸⁹¹

The Colonial Office consulted the British Board of Trade to seek its opinion on the possible consequences of the Bill. The Board was of the view that the tax differentiation between foreign and local companies 'ought to be appreciated as being an interference with freedom of trade' and likely to have a detrimental effect on the interests of the colony.⁸⁹² The Board objected and urged the placement of 'all insurance agencies in the colony on equal footing as regards taxation and not afford any special protection to local insurances companies.'⁸⁹³ At the same time the legislative process for the Bill also attracted written protest from the London Fire Office Committee. Addressing the Secretary of State for the Colonies, it strongly criticised Des Voeux's Bill as 'inequitable and wholly inconsistent with the modern legislation in this country'.⁸⁹⁴ Upon consideration of the protest and the opinion of the Board of Trade, the Secretary of State informed Des Voeux of his rejection of the Bill.⁸⁹⁵ Such rejection may be understood as a rejection of stamp duty policy that might have the effect of impeding Hong Kong's economic growth.

⁸⁸⁹ Hong Kong Hansard 5 March 1888, 24.

⁸⁹⁰ Letter from Chairman of the Fire Office Committee London to Henry Holland (24 April 1888), CO129/240, 324.

⁸⁹¹ Joan Robinson, *Essays in the Theory of Employment* (Oxford, Basil Blackwell 1947), 192; Joel Slemrod, 'Free-Trade Taxation and Protectionist Taxation' (1995) 2(3) *International Tax and Public Finance*, 471.

⁸⁹² Letter from Assistant Secretary of the Commercial Department of the Board of Trade to Under Secretary of State of the Colonial Office (1 December 1887), CO129/235, 117.

⁸⁹³ Minutes on the Bill to Amend Hong Kong Stamp Ordinance 1888 (1 December 1887), CO129/235, 119.

⁸⁹⁴ Letter from Chairman of the Fire Office Committee London to Henry Holland (24 April 1888), CO129/240, 323.

⁸⁹⁵ Letter from Frederick Stewart to Henry Holland (7 January 1889), CO129/239, 376.

It must be concluded that the decision by the British government was to adopt unilateral stamp duty policies to promote free trade in Hong Kong even though tax barriers were set up for similar transactions in other jurisdictions. In hindsight, with non-protectionist tax policies, economists argued that overall domestic income could be maximised when domestic consumers and providers faced world prices that were not distorted by taxes.⁸⁹⁶ In short, from its early colonial days until the present, it was demonstrated that protectionist stamp duty policies had no place in Hong Kong. The Hong Kong stamp duty and the Hong Kong income tax systems contained no provisions to protect local companies or taxpayers from foreign competition. In general, there were many different economic theories arguing for and against free trade tax policies that were concerned with the production of wealth in a jurisdiction.⁸⁹⁷ Nonetheless, from the Hong Kong perspective, free trade tax policies adopted for its stamp duty and income tax systems doubtlessly assisted in creating the Hong Kong economic miracle of the twentieth century.

3.5.2 Control inflation

The government did not articulate any other purpose for the 1946 stamp amendment other than to raise money to rehabilitate Hong Kong by imposing stamp duty on capital gains.⁸⁹⁸ Yet, that is not to say that another motive was absent. The evidence reveals that stamp duty levied on capital gains served a non-financial regulatory purpose.

An examination of the 1946 Hong Kong Annual Report,⁸⁹⁹ found that 'land prices since the re-occupation (by Britain) had risen very considerably as compared with the pre-war figures, in some cases by as much as 300%.⁹⁰⁰ A tax on capital gains was expedient to check 'unhealthy speculation in property'.⁹⁰¹ This could be generalised into a wider policy concern of controlling

⁸⁹⁶ Joel Slemrod, 'Free-Trade Taxation and Protectionist Taxation' (1995) 2(3) *International Tax and Public Finance*, 471.

⁸⁹⁷ Ibid 471–89.

⁸⁹⁸ See section 3.3.9.

⁸⁹⁹ Hong Kong Government, '1946 Hong Kong Annual Report' (Hong Kong, Hong Kong Government Printer 1947), 3.

⁹⁰⁰ Ibid.

⁹⁰¹ Ibid. This provides an answer to the question posed by Michael Littlewood, 'Hong Kong's Once – And Future? – Capital Gains Tax' (1998) 2(4) *Asia Pacific Journal of Taxation*, 7: 'Profits made by trading in property would seem, according to the terms of the Stamp Ordinance ... and

post war inflation.⁹⁰² Another related observation, which supports the hypothesis, is the legislator prudently refrained from indexing the gain for inflation, as that would be contrary to the secondary intention of the law, to fight inflation.

Following the development to this point, there was reason behind the law that only allowed deductions for repair works and improvements on building, but not other expenditures such as interest and selling costs.⁹⁰³ This move was to encourage post-war reconstruction. It must be concluded that the government did not want the law to hamper the speed of rehabilitating the buildings damaged by the war while controlling speculative activities via its 1946 stamp duty policy.⁹⁰⁴

3.5.3 Less is more

Stamp duty policy to enhance economic development was not of high priority until the late 1970s when a relationship between economic advances and the modernisation of Hong Kong stamp duty can be discerned. The government decided to decrease the duty rates, and numbers of chargeable instruments, and it is arguable that the government in fact unintentionally applied supply-side economics to its stamp duty system; a theory that advocates a reduction of taxes would increase revenue.⁹⁰⁵ Whether the reform was beneficial is a further issue to consider.

to the terms of the Inland Revenue Ordinance, to have been chargeable to both excess stamp duty and profits tax. It seems unlikely that the two Ordinances were administrated so as to produce this result, but how (if at all) it was avoided is unclear.' The government might not have intended to avoid such result. It intended to tax the profits on gains on speculations of immovable properties to intervene in the market to control inflation.

⁹⁰² This provides answer to the question posed by Michael Littlewood, 'Hong Kong's Once – And Future? – Capital Gains Tax' (1998) 2(4) Asia Pacific Journal of Taxation, 7: 'Why the tax introduced in 1946 was charges only on gains on the disposal of property, and not on gains made on disposal of shares, is unclear.' Apparently, the government desired to check the unhealthy speculation of properties and not shares in 1946.

⁹⁰³ Hong Kong Stamp Amendment Ordinance, No 22 of 1946, s 13.

⁹⁰⁴ This observation provides reason behind the inequity observed by Michael Littlewood, 'Hong Kong's Once – And Future? – Capital Gains Tax' (1998) 2(4) Asia Pacific Journal of Taxation, 7: 'A further inequity was that the Stamp Amendment Ordinance 1946 made no provision for the deduction of expenditure other than expenditures on improvements. Consequently, expenditure on items such as interest and selling costs would appear not to have been deductible.'

⁹⁰⁵ Philip Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilization* (2nd edn, Lanham, Maryland, Madison Books 1999), 285. Supply-side economics is a school of macroeconomics that argues that economic growth can be most effectively created by lowering barriers for people to produce (supply) goods and services as well as invest in capital. According to supply-side economics, consumers will then benefit from a greater supply of goods and services at lower prices; furthermore, the investment and expansion of businesses will

Financial Secretary Philip Haddon-Cave (in office 1971–1981) introduced the following legislation: the Hong Kong Stamp Amendment Ordinance 1977,⁹⁰⁶ Hong Kong Stamp Amendment Ordinance (No 2) 1977,⁹⁰⁷ Hong Kong Stamp Amendment Ordinance 1978,⁹⁰⁸ Hong Kong Stamp Amendment Ordinance (No 2) 1978⁹⁰⁹ and the Hong Kong Stamp Amendment Ordinance (No 3) 1978.⁹¹⁰

The consolidated effect of all these amendments was a comprehensive reform to limit stamp duty to instruments related to:

1. Conveyances of immovable properties;
2. Leases;
3. Share contract notes and transfers.

Essentially, the government radically deleted twenty-seven heads of charge and many associated mechanisms in these two years (1977 and 1978).⁹¹¹

In the search of factors influencing Haddon-Cave's stamp duty reform, it was discovered that economic advancement played a major role. Since its foundation, Hong Kong's economy has relied heavily on *entrepôt* trade. This economic reliance had been disrupted due to the Korean War⁹¹² in the 1950s. The Hong Kong economy suffered as the United Nations and the United States enforced a total embargo against trading with China.⁹¹³ This forced Hong Kong Chinese entrepreneurs to take initiatives to embark on establishing light industries. The 1950s saw a transformation from heavy dependence on China's *entrepôt* trade to an industrialised economy.⁹¹⁴ The dominant question in the 1970s was whether the growth of light industries could be sustained due to the

increase the demand for employees. Typical policy recommendations of supply-side economists are lower marginal tax rates and less regulation.

⁹⁰⁶ No 34 of 1977.

⁹⁰⁷ No 51 of 1977.

⁹⁰⁸ No 22 of 1978.

⁹⁰⁹ No 23 of 1978.

⁹¹⁰ No 24 of 1978.

⁹¹¹ See Appendix V for more details.

⁹¹² It was a war between North and South Korea, in which a United Nations force led by the United States of America fought for the South, and China fought for the North, which was also assisted by the Soviet Union.

⁹¹³ Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 162.

⁹¹⁴ Kui Wai Li, *The Hong Kong Economy Recovery and Restructuring* (Singapore, McGraw-Hill Education 2006), 34.

scarcity of land and natural resources. The colonial government concluded that it was impossible and in the early 1970s resolved to diversify Hong Kong's economy. It decided to upgrade its networks of banks, commercial services, financial and stock exchange services into a regional hub for business services.⁹¹⁵ This facilitated the significant growth in stamp duty revenue from stock trading and conveyance transactions.

The shift from light industries to financial services and property development enabled the rescission of certain comparatively non-income producing instruments that had been associated with the old economy. Haddon-Cave removed some of the archaic heads of charge which were seldom used in the 1970s. He informed that the loss of revenue associated with the removal of such items would be negligible.⁹¹⁶ Yet, the public would be spared some inconvenience.

By the 1970s, many new instruments emerged with the advancement of the economy and commercial practices. Despite the efforts of the government to amend the statute frequently, it was still difficult to interpret whether some of these documents used in the 1970s were subject to stamp duty. In Hong Kong the stamping had been compulsory and not voluntary since 1921 (unlike in Britain).⁹¹⁷ With the multiplicity of documents that were assessable for stamp duty, the application and attempted enforcement of the provisions of the Stamp Ordinance would be complicated and expensive. Evidence to support this assertion is found in the legislative record. In 1978, Haddon-Cave described the stamp duty legislation that was enacted half a century previously as a piece of 'esoteric and antiquated revenue law' with arbitrary provisions that were obscure and difficult to enforce in the 1970s.⁹¹⁸

The solution prescribed by Haddon-Cave was to drastically reduce heads of charge. The benefit associated with the reduction was the Stamp Office could

⁹¹⁵ Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 175–76.

⁹¹⁶ Per Philip Haddon-Cave, Hong Kong Hansard 2 March 1977, 639. As an illustration, the removal of agreements of service with a corporate body, comprador notes, letters of allotment, letters patent and trademarks would only cost HK\$30,000 in 1976/77 when the total stamp revenue was HK\$427 million.

⁹¹⁷ See section 3.3.7.

⁹¹⁸ Per Philip Haddon-Cave, Hong Kong Hansard 1 March 1978, 556.

redeploy staff to other areas. Further, businesses and banks would also enjoy administrative savings, as it was no longer necessary to employ a large number of staff to calculate stamp duties payable, and to advise them or their clients how not to fall foul of the compulsory stamp duty law.⁹¹⁹

So far, the discussion demonstrates it was economic progression and diversity that caused the changes to stamp duty law. Yet further examination also shows that the government aimed to facilitate economic growth by the substantial reduction of heads of charge. Haddon-Cave exemplified during the 1978/79 budget speech that with his 'major surgical exercise', the impediment to the issue of marketable securities and foreign exchange transactions, would be removed; visitors would no longer be required to pay the irritant stamp duties on currency transactions; aspiring home owners would no longer have to pay stamp duties on mortgages and the consumers on the street would be freed from duty on cheques.⁹²⁰ Analysing his arguments, the financial, tourism, construction and commercial industries would have one less inhibiting factor to the achievement of economic growth.

The following table shows the stamp duty revenues as well as the stamp duty office personnel employed for two years before and after the stamp duty reform introduced in 1978/79:⁹²¹

⁹¹⁹ Hong Kong Hansard 1 March 1978, 556.

⁹²⁰ Ibid 556–57.

⁹²¹ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1978–79' (Hong Kong, Hong Kong Government Printer 1979), sch 26; Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1981–82' (Hong Kong, Hong Kong Government Printer 1982), sch 26.

Table 3.6 Total stamp duty revenues and Stamp Office personnel from 1976/77 to 1980/81

Fiscal years	Stamp duty revenues (HK\$)	Stamp Office personnel
1976/77	427,696,982	60 officers and clerks
1977/78	489,981,714	60 officers and clerks
1978/79 (<i>Year of Change</i>)	761,827,094	60 officers and clerks
1979/80	933,568,542	54 officers and clerks
1980/81	2,052,482,744	56 officers and clerks

Source: Data extracted from the Hong Kong Commissioner of Inland Revenue, Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Relevant Fiscal Years (Hong Kong, Government Printer, Relevant Years).

The first observation is that the Stamp Office collected substantially more revenue with fewer staff. It justifies Haddon-Cave's prescient prediction that administrative expenditures would be reduced.

The second observation is that stamp duty revenue was raised significantly following the year of change. Using stamp duty collected as a gauge of the economic circumstances, the surge in revenue implied tremendous economic growth with the significant reduction of taxable instruments within the stamp duty system as predicted by Haddon-Cave.

A third observation is that the efficiency of the Stamp Office improved five-fold over the five years, from HK\$7.1 million collected per staff member in 1976/77, to HK\$36.7million per staff member in 1980/81.

With the great reduction in the number of instruments together with the reduction of stamp duty on shares contract notes from HK\$8 per mille to HK\$6 per mille announced under the Hong Kong Stamp Amendment Ordinance (No

3) 1978,⁹²² Haddon-Cave predicted the reform would cost the government an estimated HK\$155 million in the fiscal year 1978/79 alone.⁹²³ In actual fact, *Table 3.6* demonstrates that stamp duty revenue actually rose by HK\$272 million in the year of change. This was true not only in the short run, as further evidence collected demonstrates that the stamp revenue continued to escalate in the ten years after the implementation of the policy. *Table 3.7* shows the stamp duty revenue collected over an extended period of time.

Table 3.7: Total stamp duty revenues 1979/80 to 1988/89

Fiscal years	Stamp duty revenues (HK\$)
1979/80	933,568,542
1980/81	2,052,482,744
1981/82	2,167,820,520
1982/83	1,391,351,039
1983/84	1,094,238,860
1984/85	1,156,575,286
1985/86	1,696,037,567
1986/87	3,044,931,618
1987/88	5,237,435,249
1988/89	5,094,534,338

Source: Data extracted from the Hong Kong Commissioner of Inland Revenue, Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Relevant Fiscal Years (Hong Kong, Government Printer, Relevant Years).

The stamp revenue yield during the fiscal years 1982/83 to 1985/86 was hampered due to the uncertainty of Hong Kong's future surrounding the

⁹²² No 24 of 1978.

⁹²³ Hong Kong Hansard 1 March 1978, 556–58.

scheduled reversion of the New Territories to the Chinese Communist government in 1997.⁹²⁴ This uncertainty coincided with the first formal negotiation with Chairman Deng Xiaoping of the People's Republic of China during the visit of the British Prime Minister, Margaret Thatcher, to China in September 1982. Nonetheless, the stamp duties collected during these years were still around two to three times the recorded revenues immediately before the year of change.

The stamp revenue resumed escalation after the Sino-British Joint Declaration was concluded on 19 December 1984 in Beijing and arranged that Hong Kong would retain a high degree of autonomy under Chinese sovereignty with the preservation of the maintained lifestyle in Hong Kong. As an illustration, the Hong Kong stamp revenue collected in 1988/89 was HK\$5,094,534,338⁹²⁵ which was around ten times more than the stamp revenue yield immediately before the year of change of 1977/78.

The evidence demonstrates that the 1978/79 reform produced desirable and unexpected by-products of revenue in the short run as well as in the long run. As such, it was determined that the outcome of Haddon-Cave's stamp duty pursuit coincided with the expected outcome postulated by the supply-side economic theorem.

Lastly, it must be concluded that the less-is-more approach was successful from the sustainability standpoint, as none of the deleted items have since been needed or revived.

3.5.4 Hong Kong's economic development into a financial centre

Another striking economic imperative to stamp duty changes occurred in the later part of the twentieth century.

Hong Kong historians and economists argue that Hong Kong's economic development into a world-class financial centre was mainly attributable to two factors. First, the Hong Kong government's policy of guaranteeing free flows of

⁹²⁴ See section 1.5.

⁹²⁵ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1990–91' (Hong Kong, Hong Kong Government Printer 1991), sch 26.

capital movement in and out of Hong Kong. There were never barriers implemented to restrict exchange between the Hong Kong dollar and other currencies. All financial assets were easily transferable or convertible with minimum regulation or interference.⁹²⁶ Second, the Hong Kong government adhered to its golden rule of maintaining a low direct income tax environment. As an illustration, in 1966, Financial Secretary Philip Haddon-Cave (in office 1971–1981) warned that 20% was the maximum direct rate of income taxation which could be imposed on the economy without danger of serious damage.⁹²⁷

There is evidence, however, to suggest that a lesser-discerned third stamp duty factor was also responsible for the development. Examination of Hong Kong stamp duty history validates the economic imperative of building Hong Kong into a world-class financial centre, facilitating changes in its stamp duty law to complement the aforementioned two main factors.

There are three instances of this:

The first instance occurred in 1986. The law at that time was that institutions would be subject to a 1% stamp duty on issuing bearer loan capital (a form of stock under the Stamp Ordinance) denominated in Hong Kong dollars. Clearly, this stamp duty charge had an inhibiting effect on the raising of capital through the issue of loan capital in Hong Kong. The government introduced the Hong Kong Stamp Amendment Ordinance 1986⁹²⁸ to exclude such instruments from charge to Hong Kong stamp duty.⁹²⁹ Doubtlessly, this amendment encouraged the issue of corporate bonds by Hong Kong companies and foreign companies in Hong Kong. The existence of more bonds denominated in Hong Kong dollars in turn encouraged the growth of secondary markets, thus enhancing the status of Hong Kong as a major financial centre.⁹³⁰ Accordingly, it must be concluded that the economic imperative was predominant in conceiving the 1986 stamp duty amendment.

⁹²⁶ Alvin Rabushka, *Value for Money: The Hong Kong Budgetary Process* (Hoover Institution Press 1976), 84; Steve Tsang, *A Modern History of Hong Kong* (Hong Kong, Hong Kong University Press 2004), 176.

⁹²⁷ Alvin Rabushka, *Value for Money: The Hong Kong Budgetary Process* (Hoover Institution Press 1976), 114.

⁹²⁸ No 21 of 1986.

⁹²⁹ Hong Kong Stamp Amendment Ordinance, No 21 of 1986, s 2.

⁹³⁰ Per the Financial Secretary John Bremridge, Hong Kong Hansard 26 February 1986, 634–35.

The second instance occurred in 1989. The Hong Kong Stamp Amendment Ordinance 1989 exempted certain stock borrowing and lending transactions from stamp duty.⁹³¹ The lending and borrowing of share scrip are used as the means of expediting the settlement of transactions. Stock lending and borrowing are internationally accepted methods of resolving legitimate temporary settlement problems. The stamp duty amendments were used to encourage the development of an active stock borrowing and lending market in Hong Kong. This would help to improve Hong Kong's competitiveness with other major securities markets. The scope of the stamp duty relief on such transactions was subsequently extended by the Hong Kong Stamp Amendment Ordinance 1994.⁹³² The further relaxation assisted in facilitating short-selling activities and other core-market development such as stock options. The 1994 Stamp Ordinance was to remove hindrance to participation in the Hong Kong financial market. This would support competition with other major financial centres which had been trying to attract major players from the Hong Kong market to establish stock borrowing and lending operations in their own jurisdictions.⁹³³ It is thus submitted that the leading reason for implementing these stamp duty amendments was not for financial or social necessities, but for economic concerns.

The third instance occurred in 1991. The Hong Kong government decreased the overall stock contract notes stamp duty from the prevailing 0.6% to 0.5% via the introduction of the Hong Kong Stamp Amendment Ordinance 1991.⁹³⁴ An evaluation of the imperative behind the change again pointed to economic considerations. The government implemented the 1991 amendment in recognition of the world-wide trend towards eliminating the duty on stock transfers. The decrease in duty rate also reflected the government's regard for how the total dealing costs in Hong Kong compared to those in other major financial centres.⁹³⁵ This was to serve the economic imperative of ensuing Hong Kong remained competitive as an important international financial centre.

⁹³¹ Hong Kong Stamp Amendment Ordinance, No 67 of 1989.

⁹³² No 70 of 1994.

⁹³³ Per the Secretary for Financial Services Michael Cartland, Hong Kong Hansard 15 June 1994, 4233–34.

⁹³⁴ Hong Kong Stamp Amendment Ordinance, s 7.

⁹³⁵ Per Piers Jacobs, Hong Kong Hansard 6 March 1991, para. 155.

Similar exercises were carried out for the same reason in 1992⁹³⁶ and 1993⁹³⁷ to reduce the overall rates from 0.5% to 0.4% and from 0.4% to 0.3% respectively.

The fourth instance of this third stamp duty factor emerged in 1992. The prevailing law in 1992 imposed stamp duty on the sale and purchase of Hong Kong dollar debt instruments. The aim of the Hong Kong Stamp Amendment Ordinance [No 2] 1992⁹³⁸ was to exempt from stamp duty, Hong Kong dollar debt instruments issued by certain multilateral agencies.⁹³⁹ The law confines the exemptions to four multilateral agencies, namely, the Asian Development Bank, the International Bank for Reconstruction and Development, the International Finance Corporation and the European Investment Bank. The related legislation also provided that additions might be made to the list of exempt agencies by resolution of the Legislative Council. Investigation shows that of the four exempt agencies, only one, the International Bank for Reconstruction and Development, has previously issued Hong Kong dollar bonds in Hong Kong.⁹⁴⁰ As such the launch of the 1992 Ordinance might have attracted more first class issues by multilateral agencies. This would in turn have helped the expansion of the Hong Kong dollar capital markets, and so further promote Hong Kong's development as an international financial centre.

To this point, the evidence indicates that the expansion of Hong Kong into a major international financial centre was not a miracle by only offering low direct income taxation and state of the art financial regulatory framework; it was partially made possible by pre-emptive changes in the Hong Kong stamp duty system responding to the economic imperative to expand the financial market. The evidence put forward here justifies the belief that economic imperatives were an integral part of the government's agenda while formulating Hong Kong's stamp duty law.

⁹³⁶ Hong Kong Stamp Amendment Ordinance, No 36 of 1992, s 3.

⁹³⁷ Hong Kong Stamp Amendment Ordinance, No 31 of 1993, s 2.

⁹³⁸ No 18 of 1992.

⁹³⁹ Hong Kong Stamp Amendment Ordinance [No 2], No 18 of 1992, s 2.

⁹⁴⁰ Per Yeung Kai-Yin, Hong Kong Hansard 29 January 1992.

3.5.5 Identification of the third most influential imperative that drove the Hong Kong stamp duty development

The examination of the evidence to determine whether economic imperatives played a role in shaping the Hong Kong stamp duty law, indicates that before the 1970s, economic considerations were not an important colonial government consideration, if at all, in formulating stamp duty legislation. A possible exception was the failed attempt by Des Voeux to pilot an interventionist Stamp Ordinance to favour the local insurance companies. This should be compared to financial and social imperatives, which were detected, from the very beginning of stamp duty development in the nineteenth century.

Nonetheless, the evidence collected reveals that the momentous advancement in the Hong Kong economic structure in the 1970s generated the imperative for modifying the stamp duty legislation to keep pace with the new economic settings. Moreover, in the late 1970s, the Hong Kong government also saw the opportunity to alter the stamp duty legislation to further advance the Hong Kong economy. The analysis of the stamp duty history shows that the government prescribed stamp duty law to achieve the economic aim of building Hong Kong as a major international financial centre.

Based on the above analysis, it must be concluded that economic imperatives were not intuitively obvious, as compared to financial and social imperatives, in the formulation of stamp duty policy in the first 100 years of stamp duty development. Nevertheless, economic considerations became an important factor in the late 1970s when it gave rise to a complete overhaul of the law at that time to bring it to its contemporary state. Economic considerations continued to be the major focus in the last decade of British rule to maintain Hong Kong's status as a key international financial centre. As such, it is submitted that economic considerations should be ranked as the third most important imperative in driving the stamp duty reforms and amendments in Hong Kong after the primacy of financial and social imperatives.

3.6 Conclusion

An examination of the relative numbers of instances that Hong Kong stamp duty legislation was introduced for revenue raising as well as the significance of the

resulting stamp duty law to the development of the system demonstrate that the financial imperative was the most important driver in the development of the stamp duty system in Hong Kong.

It emerges that most of the stamp duty reforms and amendments during the period 1867 to 1977 were effected on an ad-hoc basis, instigated in the main by British demands for additional military contributions, world recessions, wars, plagues and the devaluation of the silver-based Hong Kong currency. These historical events generated financial imperatives that were indicated clearly by budget deficits. Some of these events led to the necessity of obtaining loans which incurred interest expenses and additional resources to establish sinking funds. It has been shown that whenever there was a revenue exigency, the Hong Kong government would first consider increasing stamp duty. The investigation offers reasons for this phenomenon. Essentially, stamp duty could be increased quickly without additional administrative charges.

The evidence demonstrates that revenue-driven stamp duty amendments or reforms that merely changed the stamp duty structures were unlikely to achieve the stated revenue aims. The revenue-driven stamp duty objective was likely to be accomplished by stamp duty legal reforms targeting both the stamp duty mechanisms as well as the structures.

This was true even if the tax rate structures were doubled or tripled across the board. It was discovered that the nature of stamp duty and the Hong Kong social structure, offered explanations for the failure associated with amendments that only tackled stamp duty structures. Traditionally, stamp duty was a voluntary tax in Britain, and Hong Kong initially adopted this ideology. Taxpayers tended to disobey if they did not intend to seek the courts' protection for relevant instruments. With a sudden substantial increase of tax rates and chargeable instruments, the taxpayers' incentive to comply would be substantially reduced. They might consider themselves to be in a better position to pay the heavy penalties later if legal judgement was deemed essential, rather than pay the high taxes up-front when the instruments were concluded. This was particularly so for the Chinese in the nineteenth and the early

twentieth centuries as they tended to avoid British Courts due to apprehension and an ignorance of the British legal system.

However the study reveals an exception to this finding. Legal changes that only tackled the stamp duty structures would succeed provided that the four factors identified under the analysis of Governor Robinson's Hong Kong Stamp Amendment Ordinance 1894 were contemplated. In 1921, Attorney Joseph Kemp further added to the understanding of how best to amend stamp duty structures to meet revenue aims. In general, the historical evidence shows that revenue-enhancing changes, attaching stamp duty to instruments without considering the social and economic realities, were bound to fail. For example, in 1868, MacDonnell did not achieve his financial objective by introducing chargeable instruments linked to commerce, and thus increased tax rates for existing instruments associated with trade during a recession. On the other hand, in 1894, Robinson augmented the tax rates for insurance and probates during a year marked by natural disasters that caused property damage and plagues that decimated a large proportion of the population. Robinson's measures exceeded his financial expectation. If Robinson had concentrated on increasing tax rates for commercial instruments in 1894, the conjecture was that he was certain to fail in obtaining additional revenue because of a marked decrease in commercial activities in this year of tragedies.

With regard to the question whether it was possible to have successful revenue enhancing reforms or amendments that focused only on stamp duty mechanisms, the evidence collected indicates persuasively that it was achievable. The study also identifies various stamp duty mechanisms that were put in place by the Hong Kong government to secure revenue and maintain system sustainability. It was found that some of the effective mechanisms were invented in Hong Kong with no British precedents. It can be concluded that the most distinguished Hong Kong advancement of stamp duty mechanism since its introduction in 1866, was the transformation of stamp duty from a voluntary tax to a compulsory tax in 1921. This was a departure from the British tenet. The evidence establishes that this concept together with third party collection mechanism tremendously reinforced revenue protection. The investigation showed that the resulting synergy was the cornerstone in facilitating financial

achievements in respect of amendments that only focused on stamp duty structures enacted after World War II. Further, the study reveals the government had recourse to the established stamp duty mechanisms to collect estate duty and capital gains tax, which rightfully belonged to other revenue law branches, with mixed outcomes.

With regard to other measures not related to stamp duty structures and mechanisms that affected stamp duty collection, the historical evidence demonstrated it was absolutely undesirable to institute policies to grant stamp duty exemptions to privileged classes of stamp duty payers.

The examination of the Hong Kong stamp duty history showed that the requirement for social policies and welfare had a material impact on the development of stamp duty regulation. The social imperative was the second most important imperative in driving the stamp duty law development. The analysis of early Hong Kong stamp duty history in the nineteenth century convincingly indicates that the attempt to use the stamp duty system to educate the public to differentiate lawful transactions from unlawful transactions was unsuccessful. In the study of the stamp duty system in the early twentieth century, it is clear that the curbing of the opium trade ultimately reflected declining stamp duty revenue and in time gave rise to further development of the stamp duty regime. The post-World War II evidence, illustrated that stamp duty amendments adopted to encourage home ownership, were successful. The investigation also showed that there was a causal link between Governor MacLehose's secret mission and stamp duty policy promulgated by the government to solicit popularity in the 1970s to increase bargaining power for the Sino-British negotiation on the future of Hong Kong. Nevertheless, the historical analysis demonstrates that social policies in the 1960s had given rise to the undesirable and complicated marginal relief system, and this had prevailed within the stamp duty law long after the related and initial social objective had ceased to be relevant.

The analysis of Hong Kong stamp duty history further advocates that economic imperatives were the third most important primary driver of stamp duty development. It was found that the Hong Kong Legislative Council passed an

interventionist stamp duty policy in 1888 to protect the local insurance industry. The evidence shows that these changes were not sustainable and were swiftly made redundant by the British government. The historical material reveals that the tradition of not adopting protectionist tax policies in Hong Kong probably started in 1888 as stamp duty was the earliest form of Hong Kong taxation that could accommodate such policies. The rule was not broken during the next 110 years under British administration. The economic history of Hong Kong's development from a cluster of modest villages to a major international financial centre in less than 150 years tends to support the appropriateness of the decision by the Colonial Office in 1888.

The investigation illustrates that, in the late 1970s, the advancement of the Hong Kong economy was a major imperative that led to the modernisation of its stamp duty legislation. The principal reformative measure was to significantly reduce the number of taxable instruments. It was also evidenced that the modernisation in turn facilitated further economic advancement. The evidence also conclusively demonstrates that changes made to modernise the stamp duty law in response to the economic imperative in the late 1970s, yielded unexpected revenue increments. The role of stamp duty in economic development acted in response to particular economic issues, inequities, desired outcomes and policy settings.

From a broader perspective, the evidence shows that the nature and importance of the imperatives changed as Hong Kong progressed. From the introduction of Hong Kong stamp duty in 1866 until the 1960s, stamp duty changes were mainly effected to enhance revenue. This is not to say the stamp duty changes in the first one hundred years were not affected by other factors; those other factors were just not as prominent as their financial counterparts. From the late 1960s to 1997, many stamp duty changes were made in response to different social needs. By the late 1970s, economic development also emerged as a significant factor in shaping the stamp duty system alongside with its social counterpart. The role of the stamp duty system as a major revenue source for the government remained unchallenged from the 1970s to 1997. It was demonstrated that effective design to enhance economic development and at the same time to capture the resulting stamp revenue,

stamp duty yield would naturally be enhanced in concert with economic advancement. As such, the colonial government found no necessity to introduce stamp duty reform or amendment that focused only on revenue enhancement after the 1970s, a peculiarity that persisted until the British departed the colony in 1997.

Chapter 4 Secondary Imperatives Shaping the Hong Kong Stamp Duty Progression

4.1 Introduction

The previous chapter analysed the primary imperatives driving the development of the Hong Kong stamp duty system, and established that financial, social and economic forces were the key drivers in the development of the Hong Kong stamp duty system. The aim of this chapter is to identify whether there were other drivers that shaped the stamp duty system, from its commencement in 1866 until the end of British rule in Hong Kong in 1997. Specifically, the objective of this chapter is to analyse and determine to what extent the content of the Hong Kong Stamp Ordinance was influenced by the pursuit of system sustainability, political demands and other less obvious pragmatic needs in achieving the modern form of the Ordinance. Lessons drawn from such analysis will permit a comprehensive understanding of the successes or failures⁹⁴¹ of the Hong Kong Stamp Ordinances promulgated in fulfilling these demands.

In the process of clarifying and identifying the secondary imperatives, the chapter also aims to rank them in order of their relative importance. The ranking is based on the three criteria discussed in Chapter 3; namely, the frequency with which stamp duty law was enacted in response to the identified impetus, and the significance as well as the sustainability of the resulting stamp duty law.⁹⁴²

4.2 Sustainability imperatives

Focussing initially on the sustainability of the stamp duty system, we investigate whether this phenomenon gave rise to another class of stimuli effecting change in the Hong Kong stamp duty law.

Sustainable development is defined in the 1987 United Nations' *Report of the World Commission on Environment and Development: Our Common Future* as the ability to assure progress 'meets the needs of the present without

⁹⁴¹ The meaning of 'success' in this context is defined in Chapter 3. See section 3.1.

⁹⁴² See section 3.1.

compromising the ability of future generations to meet their own needs'. Other scholars have defined sustainability as the very characteristic of a process (phenomenon, system) to maintain a desirable path, within a given or acceptable lane, for an indefinite period of time.⁹⁴³ Specifically, in the context of the fiscal system, sustainable development means the continuing capacity to pay governmental expenditures and to initiate tax policies which generate benefits not only in the short-term, but also in the medium and long term.⁹⁴⁴

These features are analysed so as to adapt the resultant concepts to this study. Sustainable development of the Hong Kong stamp duty system subsumes three dimensions of the law to ensure the following:

1. Solvency. The capacity of the stamp duty system to consistently generate more stamp duty revenue than the associated collection cost, and to generate sufficient revenue for the government to pay its financial obligations, while maintaining the prevailing stamp duty tax structure (that is, without the need to augment tax rates or introduce novel chargeable instruments);
2. Stability. The design and capacity of the Hong Kong stamp duty system to ensure taxpayer compliance, through resisting collapse arising from the failure of the system to adapt to changing circumstances.
3. Fairness. The capacity of the stamp duty law to demonstrate clarity and impartiality in the stamp duty treatments of various instruments to ensure taxpayer compliance, and prevent a weakening of the system.

Thus the aim of this section is to assess to what extent the promulgated stamp duty law was envisioned as a means to ensure any of the three foregoing dimensions of sustainability was maintained. To fulfil this aim, a number of significant Hong Kong stamp duty laws have been selected, to exemplify the landmark developments in offering convenience to the taxpayers, the comprehensibility of stamp duty law, the regulations introduced to determine the taxability of instruments with a foreign element, safeguard provisions to protect taxpayer rights, noncompliance provisions and exemption rules.

⁹⁴³ Ana Patricia Homorodean and others, 'Sustainability of Tax System in Romania' (2014) II[3 (5)] *SEA - Practical Application of Science*, 327.

⁹⁴⁴ Gro Harlem Brundtland, *Report of the World Commission on Environment and Development Our Common Future* (United Nations 1987), pt I.3, para 27.

4.2.1 An extension of convenience

In seeking to ascertain whether the sustainability imperative was a driver in the development of Hong Kong stamp duty during the nineteenth century, the Hong Kong Stamp Amendment Ordinance 1895⁹⁴⁵ is particularly revealing.

The principal object of the 1895 stamp legislation was to enable the instruments under the respective heads of charge listed in Table 4.1, to be stamped without penalty at any time within seven days from their date of execution. The government's proclamation makes it clear that this initiative was intended to enhance taxpayer satisfaction with the stamp duty collection mechanism and was a response to the previous high level of taxpayer frustration with the unreasonable and inconvenient requirement that the instruments be stamped before execution.⁹⁴⁶

It might be argued that the 1895 Ordinance was also promulgated for a clandestine revenue objective, as there was a nexus between stamp revenue enhancement and improving taxpayer convenience.⁹⁴⁷ The 1895 Ordinance provided a unique opportunity to test the hypothesis that stamp duty revenue would increase with the introduction of convenience alone.

⁹⁴⁵ No 26 of 1895.

⁹⁴⁶ Hong Kong Hansard 14 December 1895, 19.

⁹⁴⁷ See section 2.3.6.

Table 4.1: Stamp revenues associated with instruments that could be stamped within seven days without penalty, 1895–1896

Heads of charge^a	Revenue in 1895 (HK\$)^b	Revenue in 1896 (HK\$)^c	Increase/(Decrease) (HK\$)
Agreements	3,094	3,479	385
Arbitration awards	28	2	(26)
Attested copies	132	121	(11)
Bonds concerning respondentia and bottomry	140	126	(14)
Conveyances	13,895	14,051	156
Co-partnership deeds	118	154	36
Declarations of trust	20	70	50
Deeds of gift	125	158	33
Instruments under seal	360	290	(70)
Leases at a premium	0	0	0
Lease duplicates	0	0	0
Leases at a rent	1,053	1,243	190
Letters of hypothecation	558	409	(149)
Mortgages	4,849	4,162	(687)
Notarial acts	201	186	(15)
Notes of protest	117	91	(26)
Powers of Attorney	1,054	1,014	(40)
Servant security bonds	510	329	(181)
Settlements	28	61	33
Total	26,282	25,946	(336)

^a Hong Kong Stamp Amendment Ordinance, No 26 of 1895, s 4(iv).

^b *Hong Kong Government Gazette*, 9 January 1897.

^c *Hong Kong Government Gazette*, 9 January 1897.

Table 4.1 demonstrates that the 1895 amendment was not effectual in generating more revenue in the short term. After comparison with the penny tax reform, it may be concluded that offering convenience alone does not necessarily lead to an increase in revenue. In order to secure more stamp revenue, the convenience mechanism had to be coupled with other factors such

as significant monetary incentives and the presence of voluminous transactions.⁹⁴⁸

These findings confirm that the Stamp Amendment Ordinance 1895⁹⁴⁹ was conceived solely to make the law more taxpayer-oriented, potentially decreasing taxpayers' frustration in complying with the law. This ensured taxpayers' voluntary compliance to enhance solvency and stability, which was the cornerstone of the system's sustainability, conclusively reinforcing the underlying concern of the 1895 stamp duty amendment.

In order to assess whether this imperative continued to drive the amendment of the stamp duty law after 1895 to the present day, three specific amendments have been selected and will be examined; namely the Ordinances of 1911,⁹⁵⁰ 1961⁹⁵¹ and 1991.⁹⁵²

First, the Hong Kong Stamp Amendment Ordinance 1911⁹⁵³ enabled transfers of shares and bills of exchange to be stamped after execution with the prior agreement of the Collector of Stamp Duty.⁹⁵⁴ The effect of the law was similar to the 1895 legislation.

Second, the Stamp Duties Management Amendment Ordinance 1961⁹⁵⁵ authorised the Stamp Office to grant allowances for spoiled or misused stamps by providing cash refunds.⁹⁵⁶ Previously, when the duty was overpaid or a stamp was spoiled, the law stated that stamps of the same value might be given to the taxpayers.⁹⁵⁷ In practice, the payer was given an allowance card which permitted free stamping of documents subsequently presented, up to the value

⁹⁴⁸ Ibid.

⁹⁴⁹ No 26 of 1895.

⁹⁵⁰ No 34 of 1911.

⁹⁵¹ No 57 of 1961.

⁹⁵² No 34 of 1911.

⁹⁵³ No 34 of 1911.

⁹⁵⁴ Hong Kong Stamp Amendment Ordinance, No 34 of 1911, s 2.

⁹⁵⁵ No 57 of 1961.

⁹⁵⁶ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1961–62' (Hong Kong, Government Printer 1962), 16.

⁹⁵⁷ Hong Kong Stamp Duties Management Ordinance, No 35 of 1911, s 9 before the 1961 Stamp Duties Management Amendment Ordinance, No 57 of 1961 came into effect.

involved.⁹⁵⁸ The intention of the original law before the 1961 amendment was to prescribe effective Stamp Office internal control procedures by ensuring no cash would be handed out to the public by the stamp duty officers, preventing fraud and errors. While the original law adequately covered the case of those persons who required frequent stamping of documents, it was not suitable for those who required stamping of documents on single or infrequent occasions. The discussion demonstrates there was a trade-off between taxpayer convenience and the law intended to safeguard the Stamp Office's internal control system. The evidence shows that the government reviewed the trade-off consistently, and progressively offered taxpayers convenience with regard to tax administrative issues when resources were available as Hong Kong developed. This enhanced taxpayer satisfaction, contributing to sustainability, by enhancing the fairness of the stamp duty system.

Third, the introduction of the Hong Kong Stamp Amendment Ordinance [No 3] 1991⁹⁵⁹ was another example where offering convenience was an impellent which shaped the Hong Kong stamp duty law. During the legislative process the government informed the Legislative Council members that the related changes sought to facilitate the implementation of the international trend towards paperless trading in stock dealing in Hong Kong by ending the use of physical paper stamps. The amendment would enable the Collector of Stamp Duties to enter into a contract with the Hong Kong Stock Exchange (HKSE) for the central collection of duty payable. Under the new system, authorised officers of the HKSE would be able to endorse contract notes to signify that duty had been, or would be, paid to the Collector.⁹⁶⁰

An examination of the law found that the legislation authorised the Collector to enter into a contract with the HKSE without specifying much detail.⁹⁶¹ The legislative process did not disclose the content of the contract either.⁹⁶² Further investigation into secondary sources relating to implementation of the law reveals the prevailing practice of affixing stamps for the stamp duty chargeable on contract notes issued in respect of every sale or purchase of any Hong Kong

⁹⁵⁸ Per John Cowperthwaite, Hong Kong Hansard 29 November 1961, 312.

⁹⁵⁹ No 85 of 1991.

⁹⁶⁰ Per Pier Jacobs, Hong Kong Hansard 26 June 1991.

⁹⁶¹ 1991 Hong Kong Stamp Amendment Ordinance [No 3], No 85 of 1991, s 5.

⁹⁶² Hong Kong Hansard 26 June 1991.

stock, was replaced by a new centralised stamp duty collection system requiring members of the HKSE to pay to the HKSE on the next trading day, the total stamp duty so payable on all dutiable trade on a given trading day. Then the HKSE should pay the aggregate amounts directly to the Collector. Accordingly, members of the HKSE would no longer be required to affix adhesive stamps onto contract notes and to make the relevant cancellation thereto to denote payment.⁹⁶³

The discussion justifies that the stamp duty law was amended in 1991 due to the imperative to offer stock trading convenience. It is overt that the traditional way of affixing a physical stamp would not be effective in a high volume and paperless environment. The stability (thus sustainability) of the stamp duty system would be threatened if the legislation was not amended in step with the advancement of the stock trading process to offer convenience by doing away with the physical revenue stamps completely.

The evidence thus establishes that the desire to offer convenience motivated the Hong stamp duty changes. The examination of the stamp duty law after 1895 demonstrates that the imperative to align convenience with the preservation of sustainability, continued to influence the drafting of Hong Kong stamp duty provisions. No doubt, some of the above-mentioned amendments were repealed naturally as the government only imposed duty on instruments related to stocks and immovable properties after 1978. Nonetheless, the orthodox principle of offering convenience to enhance sustainability has a conspicuous place throughout the history of Hong Kong stamp duty and continued to be a driver of stamp duty changes in modern times.

4.2.2 Comprehensibility of stamp duty law

A second imperative potentially shaping the form of Hong Kong stamp duty was that of the comprehensibility of the law. Stamp duty law that was easier to comprehend was less likely to be avoided or evaded. Incomprehensible language in the stamp duty law could negatively affect tax compliance in general and increase the administrative costs of the Stamp Office, threatening the system's existence. In other words, incomprehensibility of the stamp duty

⁹⁶³ Richard Hechinger 'Announcement from the Stock Exchange Phasing Out the Use of Adhesive Stamps as of 2 September 1991' (Hong Kong Stock Exchange 9 August 1991).

law could induce insolvency and instability as well as giving rise to unfairness that could imperil system sustainability.

The examination of Hong Kong stamp duty at the end of the nineteenth century shows that the stamp duty law had become immensely complex. This phenomenon is attributable to the continued adoption of British stamp legislation in Hong Kong since its introduction in 1866. This branch of the British law was complicated, and the reforms or amendments during the first forty years of the Hong Kong stamp duty system were characterised by the insertion of novel heads of charge and the addition of accompanying rules to counter noncompliance. There was no fundamental focus on enhancing the comprehensibility of the system in the nineteenth century.

The analysis of the Hong Kong Stamp Amendment Ordinance 1911⁹⁶⁴ reflects an ever-increasing tendency for the stamp duty law to be incomprehensible in the early twentieth century. All of the mechanisms to counter noncompliance (which are discussed in section 4.2.4 below) introduced in the 1911 Hong Kong Stamp amendments were based on the British Stamp Act 1891⁹⁶⁵ and the British Stamp Management Act 1891.⁹⁶⁶ Hong Kong law was usually modelled on, and copied word for word from, the complex and detailed British stamp duty law. No significant departure from the British rules was detected. The formula adopted by the Hong Kong government in implementing stamp duty mechanisms in the early twentieth century was simple: detect the shortcomings and look for solutions from the law in Britain. Colonial Treasurer Alexander Thomson (in office 1899–1918) summed up the approach in conceiving the 1911 Stamp Ordinances:

In going through the old Ordinances of the colony in connection with this subject (Hong Kong stamp duty) I discovered a number of defects in addition to several, which I noted from time to time in the past few years. This Bill cures these defects and at the same time makes some fuller explanation of the existing law. There is nothing

⁹⁶⁴ No 34 of 1911.

⁹⁶⁵ 54 & 55 Vict c 39.

⁹⁶⁶ 54 & 55 Vict c 38.

new in the principle of the Bill that has not been in force in England.⁹⁶⁷

As for the amendments to the stamp duty structure, the Hong Kong Stamp Amendment Ordinance 1911⁹⁶⁸ also included accountable receipts, floating policies and share warrants to bearer, as new chargeable instruments.⁹⁶⁹ The Legislative Council had a lengthy discussion on the 1911 Ordinance, with the unofficial members raising numerous questions on the operation of the new law, notably as to the meaning of the new chargeable instruments. For instance, Henry Pollock, an unofficial member who was a King's Counsel as well as the founder of the University of Hong Kong, asked the government: 'What is an accountable receipt?' Edbert Hewett, an unofficial member who was the head of Peninsular and Oriental Steam Navigation Company⁹⁷⁰ operation in Hong Kong, also desired the government to clarify the meaning of accountable receipts. Chaloner Alabaster, the Attorney General, explained that it was an instrument used in shipping. The unofficial members remained bemused. Even at the moment when the clause was committed, Hewett protested: 'I never heard of the thing before. I don't know what it means.'⁹⁷¹

The unofficial members' illuminating remarks point directly to the fact that elements of stamp duty law in 1911 were already quite unintelligible to a layman or even a lawyer with no prolonged experience of stamp duty law. The unofficial members included a prominent legal expert and an experienced shipping merchant, and if they could not comprehend the elements of the stamp duty statute, it was safe to assume that the layman would have immense difficulties with the stamp duty law. It was also foreseeable that the Chinese taxpayers would be utterly lost due to the addition of the language barrier.

The Legislative Council discussion of the 1911 Amendment Ordinance indicated the need for the Hong Kong government to alleviate the problem of legislative complexity. If the problem were allowed to worsen, Hong Kong people might be taxed by stamp duty law that they could not understand at all.

⁹⁶⁷ Hong Kong Hansard 20 July 1911, 136–37.

⁹⁶⁸ No 34 of 1911.

⁹⁶⁹ Hong Kong Stamp Amendment Ordinance, No 34 of 1911, s 15.

⁹⁷⁰ Popularly known as P&O today, a British shipping and logistics company.

⁹⁷¹ Hong Kong Hansard 3 August 1911, 144–47.

In that event, the sustainability of the Hong Kong stamp duty system would be jeopardised.

To make the matter worse, in that same year (1911) the government introduced a Stamp Duties Management Ordinance⁹⁷² to operate alongside the Hong Kong Stamp Ordinance 1901⁹⁷³ and its consequent Hong Kong Stamp Amendment Ordinances.⁹⁷⁴

The Hong Kong Stamp Duties Management Ordinance 1911⁹⁷⁵ introduced numerous additional administrative provisions to supplement the Hong Kong Stamp Ordinance 1901,⁹⁷⁶ initiating the following new rules:

1. The Collector of Stamp Duty was enabled to grant a licence to any person to distribute adhesive stamps, and the penalties for unauthorised dealings were specified.⁹⁷⁷ Such power was not found in the 1901 Hong Kong Stamp Ordinance.
2. The conditions and procedures were specified for obtaining allowances for spoiled or misused stamps, both impressed and adhesive.⁹⁷⁸ In the 1901 Hong Kong Stamp Ordinance, it stated that allowances might be given for spoiled impressed stamps under certain situations but did not specify the claiming procedures.⁹⁷⁹
3. Fifteen offences⁹⁸⁰ relating to the physical use of the stamps were specified. The 1901 Hong Kong Stamp Ordinance stated its own set of offences with some provisions similar to those promulgated under the Hong Kong Stamp Duties Management Ordinance 1911.⁹⁸¹

Given that the introduction of a separate Ordinance to complement the existing stamp duty legislation would inevitably complicate the law, its rationale must be

⁹⁷² No 35 of 1911.

⁹⁷³ No 22 of 1901.

⁹⁷⁴ No 38 of 1902; No 19 of 1909; No 44 of 1909.

⁹⁷⁵ No 35 of 1911.

⁹⁷⁶ No 22 of 1901.

⁹⁷⁷ Hong Kong Stamp Duties Management Ordinance, No 35 of 1911, ss 3–6.

⁹⁷⁸ *Ibid* ss 7–9. Spoiled and misused stamps might be created when an instrument is drawn and stamped but was never required, or that such mistakes were made in drawing it up. An instrument might turn out to be absolutely void that bears a high value stamp.

⁹⁷⁹ Hong Kong Stamp Ordinance, No 22 of 1901, s 13.

⁹⁸⁰ Hong Kong Stamp Duties Management Ordinance, No 35 of 1911, ss 10–18.

⁹⁸¹ Hong Kong Stamp Ordinance, No 22 of 1901, ss 22–28.

explored. The Hong Kong Stamp Duties Management Ordinance 1911⁹⁸² was based on the British Stamp Duties Management Act 1891.⁹⁸³ It has been found that the British tradition of introducing a separate Stamp Duties Management Act to complement the main Stamp Duty Act started in 1870.⁹⁸⁴ The British parliamentary records do not reveal why the British Parliament passed the 1870 British Stamp Duties Management Act with no debate. Apparently, the House of Commons only spent time debating the British Stamp Act 1870 that was presented to the Parliament concurrently.⁹⁸⁵ Management Acts were omitted from debates, as they were procedural, not substantive.

The only viable rationale for instigating such a dual legislation system in Hong Kong was that the Stamp Duties Management Acts were not solely enacted for stamp duty purposes. They were enacted to govern the operations of the Post Office as well as the Excise Duty Office with regards to the use of stamps. For example, the Hong Kong Stamp Duties Management Ordinance 1911⁹⁸⁶ provided that any 'excise labels' should be deemed to be 'stamps'.⁹⁸⁷ The Ordinance also stipulated that the expression 'duty' should also mean 'postage'⁹⁸⁸ and the Postmaster General should have the same power as the Collector of Stamp Duty under the Ordinance in all areas affecting the Post Offices of Hong Kong.⁹⁸⁹

The practice of using two separate Ordinances to administer Hong Kong stamp duty inevitably increased the complexity of the system. In order to advise definitively on the procedures and offences pertaining to stamp duty, it was necessary to examine both the Stamp Ordinance and Stamp Duties Management Ordinances, side by side. The information was scattered through the two sets of laws. To make the subject more intractable, some of the provisions stated in the two statutes were nearly identical in intent but expressed in different words. Very close examination was required to extract

⁹⁸² No 35 of 1911.

⁹⁸³ Letter from Frederick Lugard to Lewis Harcourt (31 August 1911), CO129/379, 203.

⁹⁸⁴ Indeed, it was a long-standing British tradition. There was a Taxes Management Act for the old assessed taxes and for the income tax back in 1803.

⁹⁸⁵ *House of Commons Parliamentary Debates* 4 August 1870, series 3, vol 203, col 1518 & 1560; *House of Commons Parliamentary Debates* 5 August 1870, series 3, vol 203, col 1573.

⁹⁸⁶ No 35 of 1911.

⁹⁸⁷ Hong Kong Stamp Duties Management Ordinance, No 35 of 1911, s 20.

⁹⁸⁸ *Ibid* s 21.

⁹⁸⁹ *Ibid* s 22.

the subtle differences, if any. For instance, section 25 of the Hong Kong Stamp Ordinance 1901⁹⁹⁰ and section 10(1) of the Hong Kong Stamp Duties Management Ordinance 1911⁹⁹¹ both articulated the meaning attached to the forging of stamps and related penalties.

Certainly, the convention of implementing stamp duty in Hong Kong by using two Ordinances augmented the taxpayers' compliance costs as well as the government's administrative costs, by creating frustration and confusion. This adopted British tradition was unhelpful in building up the sustainability of the stamp duty system in Hong Kong.

It was evident that there existed a clear imperative to improve the comprehensibility of stamp duty law with the ultimate aim to maintain system sustainability. It must now be seen how this imperative drove the development of Hong Kong stamp duty.

In a failed attempt to make the law more comprehensible, the Hong Kong Stamp Ordinance 1901⁹⁹² greatly increased the heads of charge from thirty-five headings to fifty-one headings but a comparison of the new and the old charging schedules reveals that no new chargeable instrument was introduced.⁹⁹³ Some heads of charge were repetitive in the 1901 Ordinance. For instance, Head 9: 'Attorney, letters or powers of' is the same as Head 36: 'Letters or powers of attorney' and Head 42: 'Powers of attorney.' This should be compared with a singular Head 30: 'Powers of attorney' under the 1886 Ordinance.⁹⁹⁴ The 1901 amendment was an attempt to make the law more user-friendly. Nonetheless, in the process, the law was made more cumbersome with a formidable list of fifty-one heads of charge. In particular, when the law was translated into Chinese for the Chinese population, it made no real sense to have a longer list. It was a challenging task to go through the long schedule to comprehend the law.

⁹⁹⁰ No 22 of 1901.

⁹⁹¹ No 35 of 1911.

⁹⁹² No 22 of 1901.

⁹⁹³ See Appendix II.

⁹⁹⁴ Hong Kong Stamp Ordinance, No 16 of 1886, sch.

During the legislative process of the Hong Kong Stamp Ordinance 1921,⁹⁹⁵ Attorney General Joseph Kemp (in office 1915–1930) did not mention that the demand for comprehensibility was a driver for the 1921 major stamp duty reform. As an educated conjecture, he was too preoccupied with piloting the law through the Hong Kong Legislative Council,⁹⁹⁶ promulgated in respect of the other aspects of the 1921 reform – the increasing of revenue, prevention of evasion and correction of defects in the prevailing stamp duty law. During his speech introducing the 1921 stamp duty reform, he was not explicit as to his intention to enhance stamp duty law comprehensibility and no opposition was expected to such amendments. Nonetheless by analysing the Hong Kong Stamp Ordinance 1921,⁹⁹⁷ it can be found that Kemp included extensive new definitive sections to give precise meanings to the chargeable instruments.⁹⁹⁸ Previously, the definitions were inexact or non-existent. Furthermore, he added three columns in the charging schedule to show clearly for each instrument, the following detail:

1. The nature of stamps (ie whether the applicable stamps were over-embossed or adhesive);
2. The points of time before which the instruments had to be stamped;
3. The persons liable for stamping.⁹⁹⁹

Moreover, in response to an unabated need recognised by government for comprehensibility, Kemp redrafted the charging schedule in 1921¹⁰⁰⁰ to correct the defects of the repetitive heads of charge that were introduced in the Hong Kong Stamp Ordinance 1901.¹⁰⁰¹

The new measures improved the clarity of the Stamp Ordinance significantly. Surmising from the evidence collected, it is concluded that the need for comprehensibility did play a part in shaping the 1921 stamp duty reform. Nevertheless, as compared to other expressed driving forces which influenced the 1921 stamp duty reform, it cannot be said that improving comprehensibility

⁹⁹⁵ No 8 of 1921.

⁹⁹⁶ Hong Kong Hansard 14 April 1921, 29.

⁹⁹⁷ No 8 of 1921.

⁹⁹⁸ Ibid s 3.

⁹⁹⁹ Hong Kong Stamp Ordinance, No 8 of 1921, sch.

¹⁰⁰⁰ Ibid.

¹⁰⁰¹ No 22 of 1901.

(thus sustainability) was a major impellent that shaped the Hong Kong stamp duty system.

The potential of comprehensibility as a driving force for stamp duty development is examined, relating to the period after the 1921 major stamp duty reform and before the 1978 landmark reduction of the number of chargeable instruments. During this period, the Stamp Duty Ordinance was amended over sixty times, but none of the amendments were made with comprehensibility in mind. Indeed, these amendments made the comprehensibility of the law even worse. The evidence shows that the demand for comprehensibility to maintain sustainability was secondary to the demand for revenue and social welfare in shaping the Hong Kong stamp duty system from 1922 to 1978. Financial Secretary Philip Haddon-Cave (in office 1971–1981) remarked in 1978 that stamp duty as a tax on legal documents had been extended during the period ‘to a wide range of documents at relatively high rates by international standards’ with provisions that were ‘difficult to interpret’.¹⁰⁰² This shows the amendments during this period impeded the comprehensibility of the stamp duty law.

Investigating the reason for the government’s indifference towards enhancing comprehensibility during the period from 1922 to 1977, it is surmised that Kemp was believed to have solved the comprehensibility problem in 1921, as demonstrated above. It is also possible that the Hong Kong government’s apparent lack of interest in enhancing comprehensibility before 1978 could have been due to the non-payment of stamp duty being made a criminal offence in 1921 and no longer considered a voluntary matter. In order to avoid a criminal charge, taxpayers were forced to ascertain their liabilities despite the incomprehensibility of the law. The government’s lack of interest could also be due to the setting up of other effective noncompliance counter measures during the twentieth century which eased the necessity to ameliorate the intelligibility of the stamp duty law.¹⁰⁰³

In the quest to establish whether comprehensibility was a driver in the development of Hong Kong stamp duty in the later part of the twentieth century,

¹⁰⁰² Hong Kong Hansard 1 March 1978, 555–56.

¹⁰⁰³ See section 4.2.4.

the Hong Kong Stamp Amendment Ordinance 1978¹⁰⁰⁴ shows that there was a rekindling of the impetus to improve comprehensibility. It can be recalled that an economic imperative drove Haddon-Cave to drastically reduce the ambit of the Hong Kong Stamp Ordinance in 1978 by deleting twenty-seven heads of charge.¹⁰⁰⁵ The government took the opportunity to downsize the stamp duty law by deleting many out-dated, complicated and redundant provisions to improve comprehensibility.¹⁰⁰⁶ Even though it can be argued that the enhancement of comprehensibility was merely incidental to the quest for economic development stimulated by the 1978 stamp duty reform, it can be asserted that improving comprehensibility was recognised as a desirable aim and was acted upon by the tax reformer. The discussion reveals that comprehensibility was a force in shaping the stamp duty law in 1978, but not the major impetus.

The Hong Kong Stamp Ordinance 1981¹⁰⁰⁷ is particularly relevant in this context. During its introduction the Deputy Financial Secretary Henry Ching (in office 1976–1984) remarked in the Legislative Council that the law was an outcome of a tidying exercise that was initiated towards the end of 1978, suggesting thereby that the stamp duty legislation was enacted to improve comprehensibility. He said:

It [referring to the Hong Kong Stamp Ordinance 1981]¹⁰⁰⁸ not only clarifies a number of old areas of doubt, but should also greatly assist the legal profession, and others concerned with stamp duty matters, towards a proper interpretation of the law and the underlying intentions of the legislature. It is essentially a consolidation measure, and, upon enactment will repeal the present Stamp Ordinance and the associated Stamp Duties Management Ordinance, as well as subsidiary legislation made under those Ordinances.¹⁰⁰⁹

¹⁰⁰⁴ No 22 of 1978.

¹⁰⁰⁵ See section 3.5.3.

¹⁰⁰⁶ For example, see Hong Kong Stamp Amendment Ordinance, No 22 of 1978. Under this Ordinance, many stamp duty mechanisms were deleted. To name a few, the provisions governing cheques supplied by authorised banks, the effect of non-compliance in the case of bills of exchange, the foreign bills and notes, the bills in sets, the penalty regarding an unstamped bill or note, the exchange contracts, the mortgages of shares chargeable as agreements and the telegraphic transfers, were deleted.

¹⁰⁰⁷ No 31 of 1981.

¹⁰⁰⁸ Ibid.

¹⁰⁰⁹ Hong Kong Hansard 11 March 1981, 647.

Analysing the Hong Kong Stamp Ordinance 1981,¹⁰¹⁰ it is learned that the most significant alteration made by the Hong Kong government was to take resolute steps to clear the irregularities embedded within the British-style stamp duty system used in Hong Kong. As discussed above, the oddity of history in the British stamp duty system was the operation of the Stamp Duties Management Ordinance operating in parallel with the Stamp Ordinance. The Stamp Duties Management Ordinance made provisions for certain administrative matters, and for various offences, in relation to postage stamps, as well as stamps used for the purposes of the Stamp Ordinance, with responsibilities split between the Collector of Stamp Revenue and the Postmaster General.¹⁰¹¹

Clearly, it was more appropriate for postal matters to be covered by the Post Office-specific legislation. Accordingly, the Hong Kong government decided to remove references to postage stamps from the stamp duty legislation and to introduce appropriate amendments into the Post Office Ordinance. In relation to the stamp duty system, in 1981, Haddon-Cave repealed the Hong Kong Stamp Duties Management Ordinance 1911¹⁰¹² and the Hong Kong Stamp Ordinance 1921.¹⁰¹³ He combined them into one single Stamp Ordinance – the Hong Kong Stamp Ordinance 1981¹⁰¹⁴ to simplify and considerably improve comprehensibility.

A Hong Kong Legislative Council unofficial member Peter Wong (in office 1976–1988) summed up the state of the Hong Kong Stamp Ordinance 1981¹⁰¹⁵ at the time:

I therefore welcome the Stamp Duty Bill 1981, which is a sensible and progressive measure designed to facilitate the collection of stamp revenue and the removal of anomalies. In England, the Stamp Duties Management Act, 1891 and the Stamp Act, 1891, as amended by various Finance and Revenue Acts, notably the Finance Acts, 1949, 1970 and 1971, constitute the present law on

¹⁰¹⁰ No 31 of 1981.

¹⁰¹¹ Hong Kong Stamp Duty Management Ordinance, No 35 of 1911, s 22.

¹⁰¹² No 35 of 1911.

¹⁰¹³ No 8 of 1921.

¹⁰¹⁴ No 31 of 1981.

¹⁰¹⁵ Ibid.

the subject of stamp duties. The Bill now before the Council brings under one umbrella the existing Stamp Ordinance and the Stamp Duties Management Ordinance. In this respect, we are, for a change, ahead of English legislation.¹⁰¹⁶

A survey of the historical circumstances at that time did not identify any ulterior financial motive that the government might have had in the introduction of the 1981 Stamp Ordinance.¹⁰¹⁷ After all, there was no requirement to raise additional revenue at that time and the stamp duty revenue was on the rise after the promulgation of the 'less is more' approach under 1978 Hong Kong Stamp Amendment Ordinance.¹⁰¹⁸ Further, the analysis of the 1981 Ordinance shows that it was not designed to meet any social, economic and political agenda. Thus, the evidence presented shows that, in 1981, the imperative to improve comprehensibility took centre stage for the first time in moulding the stamp duty law.

It is clear that the amelioration fuelled by the need to improve the clarity of the Hong Kong stamp duty law was successful, as the 1981 stamp legislation persisted in its original form to this day. Further evidence to support this conclusion is found in the comments written by leading Hong Kong tax practitioners and writers on the Hong Kong stamp duty legislation promulgated in 1981:

Although practitioners still complain of the complexity of, and the difficulty in advising upon, the Stamp Duty Ordinance, it is none the less compact, fairly well organized and perhaps deserving the epithet of the only modern piece of fiscal legislation enacted in Hong Kong.¹⁰¹⁹

Following the development to this point, the evidence demonstrates that the demand for comprehensibility on the whole had limited influence on the

¹⁰¹⁶ Per Peter C Wong, Hong Kong Hansard 13 May 1981, 876. Peter C Wong was the president of the Hong Kong Law Society between 1973 and 1975. He was appointed as unofficial member of the Hong Kong Legislative Council in the 1970s and 1980s.

¹⁰¹⁷ Hong Kong Stamp Ordinance, No 31 of 1981.

¹⁰¹⁸ See section 3.5.3.

¹⁰¹⁹ P G Willoughby and A J Halkyard, *A Guide to Hong Kong Stamp Duty* (Hong Kong, Butterworths Asia 1999), 2. Referring to Stamp Duty Ordinance enacted in 1981.

development of stamp duty law based on the number of instances that stamp duty laws were amended to improve comprehensibility. There were only three such instances identified and another instance when the law was simplified but in that case incidentally to the dominant economic consideration. Nonetheless, the ground-breaking practice of bringing all stamp duty provisions under one Ordinance, triggered by the imperative to make the stamp duty law more comprehensible in 1981 was effective in paving the way for the future development of the stamp duty regime by safeguarding the law from unnecessary complication.

4.2.3 Specific problems of sustainability: jurisdiction to tax

The preceding two sections show that the demand for definite rules and regulations to enhance system sustainability was clearly evident in some stamp duty changes. This section continues to investigate whether the need for sustainability shaped the stamp duty law development in relation to instruments that included a foreign element, distinguishing between onshore (thus taxable) and offshore (thus non-taxable) instruments.

The proposition is that the demand for system sustainability would influence the legislators to develop legislation specifically designed to discern the applicable jurisdictions for levying the instruments.¹⁰²⁰ This need arises due to the inadequacy of the initial Hong Kong stamp duty regime which was designed in 1866 when economies were relatively closed and the movement of money across national borders was limited. It follows that the law did not take into account the trend towards globalisation and the integration of economies, made possible by the increasing ease with which business transactions were conducted across borders, beginning in the early nineteenth century.¹⁰²¹ The trend towards globalisation might have exposed the deficiencies of the stamp duty regime.

Analysing the law, the first Hong Kong Stamp Ordinance introduced in 1866 was indeed unclear as to whether chargeable instruments with foreign elements

¹⁰²⁰ See section 2.3.4 for examples on instruments with a foreign element.

¹⁰²¹ Kevin H O'Rourke and Jeffrey G Williamson, 'When Did Globalization Begin?' (2000) WP(7632) National Bureau of Economic Research, 28.

should be subject to stamp duty.¹⁰²² It can be recalled that the first Hong Kong Stamp Ordinance levied duty on foreign bills of exchange that were:

1. bills drawn within but payable out of the colony; and
2. bills drawn out of the colony which shall be accepted, endorsed, transferred, paid or otherwise negotiated within the colony.¹⁰²³

Indeed, the evidence shows that the Ordinance only specified some rudimentary rules to identify which foreign bills of exchange were subject to stamp duty.¹⁰²⁴ The reason for the 1866 Hong Kong legislative omission of more explicit law to determine the taxability of other instruments with foreign elements was attributed to the fact that the contemporary British stamp duty law was yet to establish any concrete legislation to dictate how instruments with foreign elements were to be treated.¹⁰²⁵

Examining the evidence, it is submitted that the sustainability of the stamp duty system would be threatened on two grounds. First, the Stamp Office might not be able to distinguish applicable jurisdictions, and thus revenue maintenance may be at risk due to the potential for disputes about the treatment of instruments with a possible foreign element, giving rise to consequent revenue leakage. This would pose a solvency problem if the number of such instruments was substantial. Second, the stability of the system might be jeopardised if taxpayers were able to exploit ambiguous stamp duty law regarding whether the instruments were onshore (thus taxable) or offshore (thus non-taxable). Accordingly, these two threats might lead to a weakening or collapse of the stamp duty system, reflecting the effects of intensification arising from globalisation and the integration of economies. Consequently, the determining of applicable jurisdictions, thus affecting sustainability, might have emerged as a potential imperative and driving force behind the changes to Hong Kong stamp duty legislation.

The study of Hong Kong stamp duty history shows that the demand for clear law to identify the applicable jurisdictions of the instruments (thus sustainability

¹⁰²² Hong Kong Stamp Ordinance, No 12 of 1866.

¹⁰²³ Hong Kong Stamp Ordinance, No 12 of 1866, s 11; see section 2.3.4.

¹⁰²⁴ Ibid.

¹⁰²⁵ See section 2.3.4.

of the stamp duty system) attracted a response in the form of the Hong Kong Stamp Ordinance 1884.¹⁰²⁶ The 1884 Ordinance recorded the first breakthrough in this area. It stipulated that instruments executed outside the colony, but brought into force or registered within Hong Kong, should attract Hong Kong stamp duty. Analysing the law, it was quite clear that the documents had to be legally enforceable in Hong Kong in order to attract Hong Kong stamp duty. This position should be contrasted with the wider provision under the British Stamp Act 1891 belonging to the same period, which was not incorporated by the Hong Kong government. The British Stamp Act 1891 provides that the British tax authorities could collect stamp duties on documents that related to any matters or things, done or to be done, in Britain.¹⁰²⁷ Inevitably, the British law invited litigation.¹⁰²⁸

The Hong Kong unambiguous, simple to follow, general rule, to determine the jurisdictions of application of instruments, undoubtedly prevented disputes between the taxpayers and the Stamp Office, and enhanced the system sustainability. The examination of the Hong Kong stamp duty history shows that the ethos of the 1884 section, conceived to provide a clearer picture of the legal position on jurisdictions of instruments, was retained in the 1921 stamp duty reform¹⁰²⁹ and was in force till it was repealed by the Hong Kong Stamp Ordinance 1981.¹⁰³⁰ By 1981, the rule was no longer necessary as the government had repealed all chargeable instruments except documents executed in respect of conveyance of immovable properties and stocks which had specific legislation enacted to dictate their jurisdictions for tax.

It is found that besides enacting the general rule as discussed above, the demand for locality identification drove the Hong Kong stamp duty reformers to introduce new legislative provisions in order to distinguish jurisdictions for specific instruments to attain system sustainability.

¹⁰²⁶ No 15 of 1884.

¹⁰²⁷ British Stamp Act 1891 (54 & 55 Vict c 39), s 14(4).

¹⁰²⁸ See for examples, *IRC v Maple & Co (Paris) Ltd* [1908] AC 22; *Ansell v IRC* [1929] 1 KB 608; *Oscar Faber v IRC* [1936] 1 All ER 617.

¹⁰²⁹ Hong Kong Stamp Ordinance, No 8 of 1921, s 17.

¹⁰³⁰ No 31 of 1981.

With respect to the specific law enacted for bills of exchange, the first law in this area was enacted in 1866, as discussed above. Evaluation of the Hong Kong stamp duty history shows that there were minor amendments to the wording of laws over time to close loopholes¹⁰³¹ but the philosophy of the 1866 regulations was intact until the law was no longer necessary and repealed in 1978 with the abolition of bills of exchange as chargeable instruments.¹⁰³²

More significantly, the appraisal of the Hong Kong stamp duty history uncovers that the Hong Kong Stamp Ordinance 1921¹⁰³³ was the first piece of legislation to deal specifically with the taxing right of instruments in respect of immovable properties that were tinted with foreign components. The rule prescribed was simple; all instruments which related to immovable properties situated out of the colony should be exempted from stamp duty. In other words, conveyances executed overseas in respect of Hong Kong immovable properties attracted Hong Kong stamp duties; conveyances executed in Hong Kong in respect of immovable properties situated outside of the colony were exempted. It must be concluded that this rule was effective in making the law absolutely clear in this respect. It was a rational exemption, as the Hong Kong government had no jurisdiction over properties situated outside of Hong Kong. Although the legal form changed from being a specific exemption in the Hong Kong Stamp Ordinance 1921¹⁰³⁴ to a direct description of the chargeable instrument as 'Hong Kong' immovable property in the schedule annexed to the Hong Kong Stamp Ordinance 1981, the substance remained.¹⁰³⁵ The tenet developed in 1921 remains as a core concept in today's Hong Kong stamp duty system.

Examining how the law was influenced by the continuous pursuit of stamp duty system sustainability in Hong Kong, the investigation reveals that the first specific law to distinguish the locality of the share contract notes was passed in 1968. The Commissioner of Hong Kong Inland Revenue, Arthur Duffy (in office 1963–1972) explicated that the novel rule introduced in 1968 to discern the locality of shares and related documents was the 'result of the culmination of

¹⁰³¹ For example, the instruments had to be stamped before the holder presented it for payment, indorsed, transferred or in any manner negotiated or paid the bills or notes.

¹⁰³² See section 3.5.3; Appendix V.

¹⁰³³ No 8 of 1921, s 34(3).

¹⁰³⁴ No 8 of 1921, s 34(3).

¹⁰³⁵ No 31 of 1981, first sch.

some ten years' research and deliberation.¹⁰³⁶ The law Duffy referred to was the Hong Kong Stamp Amendment Ordinance 1968, introduced to the effect that stamp duty on stock contract notes would only be payable if the transfer was required to be registered in Hong Kong.¹⁰³⁷ In other words, the law prescribed a simple rule to clarify that stocks with share registers maintained outside of Hong Kong were classified as offshore and the related transfers would not attract stamp duty. This cleared the uncertainty that had existed since the 1866 stamp duty introduction. The principle has remained as the keystone of the Hong Kong stamp duty system until the present day.

The available evidence reveals that the Hong Kong government did not vigorously pursue the definition of assessable jurisdictions notwithstanding demands to clarify the rules. The imperative to define relevant jurisdictions and the assessment of transactions to ensure system sustainability was a minor driver in shaping the Hong Kong stamp duty system.

It is suggested that the government's apparent disinterest was occasioned by stamp duty being primarily paid on a voluntary basis until 1921. The motivation to pay stamp duty was mainly due to the need for the holder of the instrument to gain Hong Kong judicial protection, of the instruments executed. Nonetheless, the Hong Kong Courts' capacity to enforce instruments with foreign components was questionable. Therefore, the taxpayers would not voluntarily pay duties on such instruments even if the stamp duty law had impeccable provisions to deal with issues arising from jurisdictions to tax.

Even after 1921 when the payment of stamp duty was made compulsory in Hong Kong, the government remained lax with regard to making specific rules relating to the many instruments under the Stamp Ordinance. Probably, this was due to the complications involved, as well as the anticipated difficulties associated with enforcement.

¹⁰³⁶ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1968–69' (Hong Kong, Government Printer 1969), 19.

¹⁰³⁷ Hong Kong Hansard 26 June 1968, 304; Hong Kong Stamp Amendment Ordinance, No 30 of 1968, s 16.

Nonetheless, the specific regulations promulgated in 1921 and 1968, driven by the demand to identify jurisdictions of instruments in respect of conveyances and stocks respectively, were instrumental in maintaining the Hong Kong stamp system sustainability during the period of globalisation in the latter half of the twentieth century. This was particularly the case during the rapid advance of the Hong Kong economy after the World War II, which rendered stamp duty revenue on stocks, immovable properties and related transactions, increasingly important.¹⁰³⁸ It was even more significant when the Hong Kong government eventually reduced the list of taxable instruments to those related to stocks and conveyances in 1978.¹⁰³⁹ The system sustainability was conditional upon the enactment of clear law in this area.

4.2.4 Procedural developments in countering noncompliance¹⁰⁴⁰

The examination of stamp duty history suggests that the need to cultivate system sustainability by enhancing the law to counter stamp duty noncompliance was potentially another force driving the reform of the Hong Kong's stamp duty regime. Stamp duty system sustainability is partly contingent upon effective noncompliance measures. Without these rules, the stamp duty system might not be able to generate adequate revenue to maintain solvency. Moreover, the stability of the system might be threatened in the event a government attempt to enhance revenue by aggressively raising stamp duty rates, inducing taxpayers' to be noncompliant. In this instance, the fairness of the system would be jeopardised as the stamp duty burden would be borne by taxpayers who chose to comply, while non-compliant taxpayers would escape without repercussions. Ostensibly, the three cornerstones of system

¹⁰³⁸ See Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1970–71' (Hong Kong, Government Printer 1971), 54; Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1980–81' (Hong Kong, Government Printer 1981), sch 26. The stamp duty collected on share contract notes immediately after the implementation of the Hong Kong Stamp Duty Amendment Ordinance, No 30 of 1968 were HK\$19,543,475 and HK\$26,940,823 for the fiscal years 1969/70 and 1970/71 respectively, representing 20.7% and 20.8% of the total stamp revenues for those two fiscal years. The stamp duty collected on share contract notes was HK\$309,701,047 and HK\$989,648,912 for the fiscal years 1979/80 and 1980/81 respectively, representing 33.2% and 48.2% of the total stamp revenues for those two fiscal years.

¹⁰³⁹ See section 3.5.3.

¹⁰⁴⁰ As discussed in Chapter 2, in this thesis, the term stamp duty noncompliance encompasses both the modern day tax taxonomy of stamp duty evasion and stamp duty avoidance as well as the act of deciding not to pay stamp duty when the instruments were executed. See section 2.3.8.

sustainability – solvency, stability and fairness – were linked to procedural developments in countering noncompliance.

An analysis of Hong Kong stamp duty evolution from 1867 to 1997 reveals that there were several provisions in the Stamp Ordinance to counteract noncompliance. They were:

1. Provisions to ensure compliance; that the necessary duties were paid voluntarily and all instruments required to be stamped, were in fact stamped.
2. Provisions to counteract stamp duty evasion. For the purpose of this study, stamp duty evasion is defined as the illegal circumvention of duties by deliberately misrepresenting the true state of the dutiable transactions to the Collector of Stamp Duty.
3. Provisions to curb stamp duty avoidance. For the purpose of this study, stamp duty avoidance is defined as the legal use of stamp duty law to reduce tax burden.

In order to discern to what degree the imperative to counter noncompliance influenced the Hong Kong Stamp Ordinance during the period of study, 1867 to 1997, each type of provision will be considered in turn.

Provision to ensure compliance (voluntary and full payment)

It can be recalled that the first Hong Kong Stamp Ordinance 1866 prescribed general noncompliance measures to encourage voluntary compliance.¹⁰⁴¹

General rules to counter noncompliance refer to legislation that is not enacted for any particular class of transaction. The rules are applicable to all transactions. The initial 1866 general noncompliance provisions were outlined in the following terms:

1. Awarding the whole or part of the fine gained by the Hong Kong government to informers of incidences of documents being executed but not stamped.¹⁰⁴²
2. Rendering unstamped documents inadmissible in courts before the payment of the assessed duties as well as the penalties.¹⁰⁴³

¹⁰⁴¹ See section 2.3.8.

¹⁰⁴² Hong Kong Stamp Ordinance No 12 of 1866, s 30.

¹⁰⁴³ Ibid s 15.

3. Ordering public officers not to act upon unstamped documents before the payment of the payment of the assessed duties as well as the penalties.¹⁰⁴⁴
4. Levying penalties on instruments presented for stamping after the time limits prescribed by the Ordinance.¹⁰⁴⁵

The function of these provisions was to encourage voluntary compliance in the first instance rather than being faced with legal consequences later on. Such rules were needed as it was no offence not to stamp a document in 1866¹⁰⁴⁶ and the government had no way of knowing whether taxable written instruments had been executed but not duly stamped.

The examination shows that the government repealed measure 1 above, the provision rewarding informers who discovered noncompliance, when it carried out the 1884 stamp duty reform.¹⁰⁴⁷ In the absence of any explanation provided by the government during the legislative process, it is suggested that the law was unpopular among taxpayers and would cause social disharmony and threaten the sustainability of the stamp duty system. An examination of newspaper coverage at the time, does not reveal any discussion of measure 1, or provide any other reason, as these reports concentrated solely on the amendments to the stamp tax structure.¹⁰⁴⁸ Another possible explanation for the repeal was that the law was ineffective and did not really make sense, as technically a failure to stamp only became an offence in 1921.

The examination of the Hong Kong stamp duty legislation during the next thirty years from 1884 to 1914, demonstrates that the demand for general noncompliance measures to encourage voluntarily compliance had only a minor influence on the Hong Kong stamp duty law. The changes detected during this period generally related to intensifying the magnitudes of monetary penalties in

¹⁰⁴⁴ Ibid.

¹⁰⁴⁵ Ibid s 16.

¹⁰⁴⁶ Per Joseph Kemp, Hong Kong Hansard 25 April 1921, 29.

¹⁰⁴⁷ Hong Kong Stamp Ordinance, No 15 of 1884.

¹⁰⁴⁸ See Editorial, 'Hong Kong Legislative Council on The Stamp Ordinance' *Hong Kong Daily Press* (Hong Kong 8 January 1885), 2; Editorial, 'The Daily Press' *Hong Kong Daily Press* (Hong Kong 14 January 1885), 2; Editorial, 'Amended Stamp Ordinance' *Hong Kong Daily Press* (Hong Kong 28 March 1885), 2.

the event of detected noncompliance.¹⁰⁴⁹ It is possible that the related British tenets inherited in 1866 were adequate in promoting voluntary compliance in the early years of the system's existence. The evidence to support this theory is that the British stamp duty system continued to depend on the same principles to ensure voluntary compliance for the entire twentieth century.¹⁰⁵⁰

The historical evidence suggests that the need to ensure stamp duty voluntary compliance had more impact on the Hong Kong stamp duty development from 1914 onwards. This was triggered by the 1908 British government decision to curtail the opium trade in Hong Kong, forcing the Hong Kong government to enhance stamp duty revenue to make up for the loss of the substantial opium-related income.¹⁰⁵¹ The Hong Kong government started to make changes to the stamp duty structures by the Hong Kong Stamp Amendment Ordinance 1909¹⁰⁵² to enhance revenue and eventually some tax rates were aggressively doubled by virtue of the Hong Kong Stamp Ordinance 1921.¹⁰⁵³ These changes might have led to taxpayer noncompliance normally associated with such exercises. For that reason, there was greater demand for a legislative response to pre-empt fiscal disobedience through strengthening legislation that boosted voluntary stamping.

The first response was the Hong Kong Stamp Amendment Ordinance 1914.¹⁰⁵⁴ It prescribed that where the issuers had the legal obligation to cancel adhesive stamps on receipts, these were to be cancelled by the issuers before delivering them out of their hands.¹⁰⁵⁵ Obviously, the law was to prevent dishonest people from re-using the adhesive stamp. On further thought, the more subtle implication of the law was to make it explicit that adhering stamps on receipts was not voluntary; it was intended to be compulsory. This was useful, as whether stamp duty was a voluntary or compulsory tax, was still ambiguous in

¹⁰⁴⁹ For example, see Hong Kong Stamp Ordinance No 15 of 1884, s 10, which increased the monetary penalties.

¹⁰⁵⁰ J G Monroe and R S Nock, *Monroe and Nock on the Law of Stamp Duties* (7th edn, London, Sweet & Maxwell 1989), 18–29.

¹⁰⁵¹ See section 3.4.2.

¹⁰⁵² No 19 of 1909.

¹⁰⁵³ No 8 of 1921.

¹⁰⁵⁴ No 14 of 1914.

¹⁰⁵⁵ Hong Kong Stamp Amendment Ordinance, No 14 of 1914, s 2.

Hong Kong in 1914. The 1914 Ordinance hinted at the legal trend to make stamp duty a compulsory tax to enhance the sustainability of the system.

The second response was included in the Hong Kong Stamp Ordinance 1921, introducing many revolutionary stamp duty mechanisms.¹⁰⁵⁶ It was an integral part of the stamp duty reform with the dominant objective being to enhance revenue by significantly increasing stamp duty rates.¹⁰⁵⁷ It can be recalled that these mechanisms included the concept of making the payment of stamp duty a compulsory civil obligation, and the non-payment of stamp duty, a criminal offence;¹⁰⁵⁸ the concept of joint and several liability to stamp duty for instruments that involved two or more parties;¹⁰⁵⁹ and, the concept of rendering unstamped documents wholly inadmissible in civil proceedings or registrations.¹⁰⁶⁰ It can be said that, besides being enacted for a revenue objective, these general concepts countering noncompliance were also initiated to meet the secondary requirement to enhance system sustainability. It is submitted that these rules assisted in alleviating the threat to the stamp duty system's sustainability by outstripping the possibility of widespread noncompliance commonly associated with a significant increase in stamp duty rates, as was the case in 1921.¹⁰⁶¹

About a year following the actual implementation of the new rule (1921) to render unstamped documents wholly inadmissible in civil proceedings or registrations,¹⁰⁶² the colonial government realised that the rule would cause considerable hardship in the case of contracts. It was brought to the attention of the Hong Kong government in 1922 that agreements were very frequently entered into by persons who had no legal advice, and who probably never thought of the question of stamping at all.¹⁰⁶³ If litigation occurred, the party relying on the agreement might find they were unable to enforce their rights, solely because the agreement was not stamped. The other party to the contract was thus provided with an unworthy defence to an obligation that was otherwise

¹⁰⁵⁶ See section 3.3.7.

¹⁰⁵⁷ Ibid.

¹⁰⁵⁸ Hong Kong Stamp Ordinance, No 8 of 1921, s 5(7); see section 3.3.7.

¹⁰⁵⁹ Ibid s 5(5).

¹⁰⁶⁰ Ibid s 6.

¹⁰⁶¹ See section 3.3.7.

¹⁰⁶² Hong Kong Stamp Ordinance, No 8 of 1921, s 6.

¹⁰⁶³ Letter from Claud Severn to Winston Churchill (17 October 1922), CO129/476, 295.

perfectly good. Attorney General Joseph Kemp (in office 1915–1930) said the stringency of the original principle was to compel the general public to stamp all agreements. After a review of the law, the colonial government found that ‘the sporadic cases of individual hardship would probably never teach the community at large’ and there would be no justification to insist the agreements be wholly inadmissible if not stamped within seven days.¹⁰⁶⁴ Accordingly, the Hong Kong Stamp Amendment Ordinance 1922¹⁰⁶⁵ was introduced to the effect that non-payment of stamp duty on agreements and some other instruments was no offence. These instruments would still be stamped after the seven day period had lapsed subject to payment of penalties. Without the amendment, it was clear that the public might show contempt in the face of the stamp duty system’s unfairness and thus threaten its sustainability. The evidence leads to the conclusion that the law was modified by the need to preserve the system.

The demand for sustainability continued to influence legislators, leading them to relax the strictness of the law originating in 1921 to prevent community resentment. Ultimately (1981), the law was amended to the effect that all chargeable instruments not duly stamped beforehand might be received in evidence in civil proceedings, if the court so ordered, upon the personal undertaking of the solicitor representing the party to cause the instrument to be stamped in respect of the stamp duty chargeable thereon and the payment of any applicable penalty.¹⁰⁶⁶ The law remains in force till the present day.

With a view to restoring impartiality and, thereby, the sustainability of the system, the Hong Kong stamp duty mechanism was again fundamentally altered in 1976. The principle originating in 1921, which made it a criminal offence if a person liable for stamping a document failed to ensure that it was properly stamped, was repealed.¹⁰⁶⁷ Investigating the rationale behind the change, shows that the legislative amendment was prompted by the Privy Council’s expressed concern over whether the law in Hong Kong could impose criminal liability on parties acting *bona fide*, for example, where the value of

¹⁰⁶⁴ Ibid 296.

¹⁰⁶⁵ No 24 of 1922.

¹⁰⁶⁶ Hong Kong Stamp Ordinance, No 31 of 1981, s 15 (1A).

¹⁰⁶⁷ Hong Kong Hansard 26 May 1976, 914; Hong Kong Stamp Amendment Ordinance, No 33 of 1976, s 2.

property assigned was found to be substantially more than the price at which it had changed hands.¹⁰⁶⁸

As regards the doctrine of joint and several liability introduced in 1921, the examination of stamp duty history shows that no change was effected. It was retained in Head 1: Immovable property in the current Hong Kong Stamp Ordinance.¹⁰⁶⁹ Modern day taxpayers may query the necessity of the doctrine as solicitors usually collect all stamp duties from the transferee (buyer) of the real properties before proceeding with the legal formalities. Through the review of the historical origins of the doctrine, it is concluded that the rule was not initially designed only for conveyances of sale. Its application in 1921 was for a wide variety of instruments with multiple parties, with the objective being to counter non-compliance. All such instruments have been repealed today except for agreements of purchase and sale for an immovable property and conveyances for sale. The intended function of the principle depleted significantly.¹⁰⁷⁰ Perhaps the modern transferees (buyers) of real property may use the phrase 'jointly and severally liable' stated in the Stamp Ordinance to bargain with the transferors (sellers) to share the stamp duty burdens, a practice which was not envisioned in the 1921 stamp duty reform.

The evidence shows that the need to enhance sustainability had led to the introduction of a number of noncompliance provisions to encourage voluntary payment. Nonetheless, some of these amendments conceived after 1921 were to neutralise the detrimental effects on impartiality arising from the noncompliance provisions introduced by Kemp in 1921.

Provisions to counteract stamp duty evasion

Evasion, which is the fraudulent non-payment of the duty, has been and continues a serious matter for all tax systems. The key general counter evasion rule that was enacted under the Hong Kong first Stamp Duty Ordinance was to levy penalties if a taxpayer was found to be wilfully inserting an amount lower than the true consideration in respect of instruments subject to *ad valorem*

¹⁰⁶⁸ *Lap Shun Textiles Industrial Co Ltd v Collector of Stamp Revenue* [1976] AC 530, 535.

¹⁰⁶⁹ Hong Kong Stamp Ordinance, c 117 (Originally No 31 of 1981).

¹⁰⁷⁰ In modern days, the principle retained its usage in the event that the Hong Kong Inland Revenue Department issued a further assessment on conveyances on sale, which it considered the stated considerations were under-declared.

duty.¹⁰⁷¹ The rule was used to counter stamp duty evasion when the documents were presented to the Stamp Office for voluntary stamping.

An examination of the legislative history of the stamp duty shows that there were six major anti-evasion enactments that were added into the stamp duty system because of the need to counter stamp duty evasion during British rule.

The first of these enactments was prescribed under the Hong Kong Stamp Ordinance 1884.¹⁰⁷² The examination of the 1884 stamp duty reform shows that the legislator imposed, for the first time, imprisonment as well as hard labour as penalties for any person who forged stamps, so as to thwart stamp duty evasion.¹⁰⁷³

The evidence reveals that the second of these enactments was introduced in 1901. Governor Sir Henry Blake (in office 1898–1903) found appealing, the idea of concentrating on stamp duty levied on probates to enhance revenue yield. He increased the related rates and at the same time introduced noncompliance provisions specifically designed to thwart the evasion of stamp duty on probates.¹⁰⁷⁴ The introduction of the 1901 Hong Kong Stamp Ordinance¹⁰⁷⁵ repealed all the earlier stamp duty legislation in force. The 1901 legislation was a stamp duty amendment with the major objective to ameliorate the anti-evasion mechanism for probates. The Hong Kong government implemented provisions to prevent rich persons who fell seriously ill from conveying away their properties within twelve months before their death, so as to evade stamp duty on probate.¹⁰⁷⁶ The evidence reveals that two factors caused the Hong Kong administration to implement these provisions. First, there were cases discovered by the government where a person, or persons, had deliberately evaded duties by entering into schemes such as that noted above. It was imperative that the government prevent further losses by urgently implementing corresponding anti-evasion legislation. Second, after the 1894 stamp duty amendment to increase stamp duty rates on probates, this branch of stamp duty

¹⁰⁷¹ Hong Kong Stamp Ordinance, No 12 of 1866, s 27.

¹⁰⁷² No 15 of 1884.

¹⁰⁷³ Hong Kong Stamp Ordinance, No 15 of 1884, s 20.

¹⁰⁷⁴ Hong Kong Stamp Ordinance, No 22 of 1901.

¹⁰⁷⁵ No 22 of 1901.

¹⁰⁷⁶ Hong Kong Stamp Ordinance, No 22 of 1901, s 18(1)(a).

started to contribute significantly to Hong Kong stamp revenue.¹⁰⁷⁷ No doubt, these noncompliance provisions were developed for the dominant purpose of guaranteeing revenue flow, and partly conceived with system sustainability in mind.

It has been discovered that the third of these enactments, the 1911 Hong Kong Stamp Amendment Ordinance,¹⁰⁷⁸ was promulgated to reinforce the original 1866 counter-evasion measures. The Ordinance required taxpayers to state fully the circumstances of the instruments for the Stamp Officer's scrutiny to determine their nature and failing to do so would incur a penalty.¹⁰⁷⁹ Moreover, the 1911 legislation also provided that if more than one instrument was written upon the same piece of paper, every one of the instruments was to be separately and distinctly stamped.¹⁰⁸⁰ In addition, the 1911 law was clear that the applicable exchange rate was as prevailed on the date of the instruments, so as to determine the Hong Kong dollar equivalents for any chargeable documents denoted in foreign currencies, thus preventing the evasion of duties by manipulating the exchange rates.¹⁰⁸¹

The fourth enactment in response to the demand for counter-evasion rules to maintain system sustainability was the concept of empowering the Collector of Stamp Duties to inspect and search any premises to prevent evasion. Such law was unheard of in Britain at that time.¹⁰⁸² This rule, stemming from the introduction of the Hong Kong Stamp Ordinance 1921,¹⁰⁸³ is overt evidence of the Ordinance spawning many revolutionary methodologies to counter noncompliance and prevent revenue leakage while the government set about significantly increasing the stamp duty rates under the same Ordinance.¹⁰⁸⁴

¹⁰⁷⁷ For example, the top three sources of stamp duty revenue in 1899 were bank notes (HK\$102,230), conveyances (HK\$69,338) and probates (HK\$33,572). The result was consistent with 1900, where the top three sources were conveyances (HK\$116,552), bank notes (HK\$111,522) and probates (HK\$77,818). See *Hong Kong Government Gazette*, 'Return of Stamp Revenue for the Years 1899 and 1900, Government Notification No 30' (Hong Kong Government 19 January 1901).

¹⁰⁷⁸ Hong Kong Stamp Amendment Ordinance, No 34 of 1911.

¹⁰⁷⁹ *Ibid* s 5.

¹⁰⁸⁰ *Ibid* s 4.

¹⁰⁸¹ *Ibid* s 7.

¹⁰⁸² Hong Kong Stamp Ordinance No 8 of 1921, s 40.

¹⁰⁸³ No 8 of 1921.

¹⁰⁸⁴ See section 3.3.7.

The *Hong Kong Annual Departmental Report by The Commissioner of Inland Revenue* (1962) revealed that the Stamp Office relied heavily on this power thereafter to detect breaches of the Hong Kong Stamp Ordinance as well as wilful evasions of stamp duty by dispatching stamp duty inspectors to various commercial organisations. Moreover, the Hong Kong Stamp Office was open to complaints and information received relating to the omission or neglect of stamped documents and vowed to follow up to a satisfactory conclusion.¹⁰⁸⁵ The examination of the 1956–1957 report demonstrates that evasion was indeed a daunting problem as the Stamp Office detected no fewer than 89,410 instances of failure to stamp and some of these cases were suspected to be wilful evasions and thus prosecuted.¹⁰⁸⁶ Nevertheless, the Hong Kong Stamp Office concluded that the department's continuous and concerted effort in assigning stamp duty inspectors to various commercial establishments had made the public 'more aware of their responsibilities' and decreased stamp duty infringements significantly.¹⁰⁸⁷ In plain language, the taxpayers were intimidated to pay up at the first instance rather than being subsequently detected and subjected to the imposition of heavy penalties. It has been discovered that, from the 1960s, while the Hong Kong Stamp Office inspectors detected violations, they considered there were few deliberate attempts to evade stamp duty. As clear evidence, the Stamp Office disclosed that practically none of the infringement cases detected by its departmental inspectors were deliberate attempts to evade duties in the fiscal year 1960–1961.¹⁰⁸⁸ The evidence reveals that the law allowing inspection and searches was effectual in decreasing stamp duty evasion from 1921 to the 1960s. That possibly explains why there was no prolific promulgation of legislation to counter stamp duty evasions from 1921 to 1967.

¹⁰⁸⁵ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1961–62' (Hong Kong, Government Printer 1962), 11.

¹⁰⁸⁶ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1956–57' (Hong Kong, Government Printer 1957), 20.

¹⁰⁸⁷ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1957–58' (Hong Kong, Government Printer 1958), 19; Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1959–60' (Hong Kong, Government Printer 1960), 11.

¹⁰⁸⁸ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1960–61' (Hong Kong, Government Printer 1961), 11.

The Stamp Office revealed that its frequent investigations found no deliberate attempts to evade duty in the fiscal years 1960–61 to 1966–67.¹⁰⁸⁹ On the one hand, as explained above, the result suggests physical inspections curbed stamp duty evasion effectively in the forty years from 1921 to 1961. On the other hand, the outcomes of the physical investigation reports are also disturbing as they point to the withering of stamp duty inspection practice from the 1960s. It was not realistic to believe that there were no stamp duty evasions at all as suggested by the reports. It is submitted that the taxpayers might have found ways to circumvent inspections.

Fundamentally, the analysis shows that the need for a counter-evasion mechanism (thus enhancing sustainability) continued to be an imperative in shaping the Hong Kong stamp duty law in the second half of the twentieth century. The law's response was the introduction of a fifth counter-evasion enactment in 1968. The 1968 amendments made third party professionals, such as lawyers and accountants who might 'use' their clients' unstamped (or under-stamped) documents, to be liable for stamp duty while acting for their clients.¹⁰⁹⁰ The intention of the government was clearly to shift responsibility to third party professionals to ensure all documents handled by them were properly stamped. The Hong Kong General Chamber of Commerce made numerous representations to oppose this noncompliance provision on the ground that the law had created a new criminal offence¹⁰⁹¹ and made innocent persons liable

¹⁰⁸⁹ Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1960–61' (Hong Kong, Government Printer 1961), 11; Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1961–62' (Hong Kong, Government Printer 1962), 15; Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1962–63' (Hong Kong, Government Printer 1963), 15; Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1963–64' (Hong Kong, Government Printer 1964), 15; Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1964–65' (Hong Kong, Government Printer 1965), 17; Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1965–66' (Hong Kong, Government Printer 1966), 18; Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1966–67' (Hong Kong, Government Printer 1967), 18.

¹⁰⁹⁰ Hong Kong Hansard 26 June 1968, 298; Hong Kong Stamp Amendment Ordinance, No 30 of 1968, s 11.

¹⁰⁹¹ Non-payment of stamp duty was made a criminal offence under the Hong Kong Stamp Ordinance, No 8 of 1921. The Hong Kong Stamp Amendment Ordinance, No 33 of 1976 repealed the principle.

for the failure of others to stamp.¹⁰⁹² Nonetheless, the unique Hong Kong system, whereby the public could not remove Governors and senior officials by franchise, did not impede the passage of this controversial provision.¹⁰⁹³ The law was harsh with regard to professionals but it was an effective method to curb evasion, and at the same time it shifted the Stamp Office's inspection costs to the professionals. Indeed, the attempt to enact tax law in this way supported the sustainability of the system by maintaining revenue flow and at the same time, controlling the government's collection cost.

Further evidence to support the reasoning that the demand to ameliorate counter-evasion regulation drove the 1968 changes in stamp duty law, is found in the *Hong Kong Annual Departmental Report by The Commissioner of Inland Revenue*. This obliquely reveals that physical inspections of documents were not carried out as frequently as before, from the fiscal year 1967–68 onwards. Inspections were streamlined to concentrate on assessing documentation of banks, moneychangers, stockbrokers, and company prospectuses, to ensure all stamp duties on share and property transactions had been properly reported and stamped.¹⁰⁹⁴ The reduction in the scope of inspection was probably due to the introduction of the 1968 amendments as an additional measure with the sole aim of countering evasions which enabled the Stamp Office to reduce its reliance on the stamp duty inspection mechanism.

The final counter-evasion enactment was introduced in the 1960s in the form of imposing obligations on taxpayers to disclose specific information to curb avoidance activities. In 1967, Financial Secretary John Cowperthwaite (in office 1961–1971) contrived a rule to prevent the falsification of revenue which was made possible by the introduction of the system of marginal relief in 1967 to encourage home ownership.¹⁰⁹⁵ In order to prevent abuse of the system,

¹⁰⁹² Per John Cowperthwaite, Hong Kong Hansard 26 June 1968, 298.

¹⁰⁹³ See section 2.4.2 for discussion on the Hong Kong political system and its impacts on the Hong Kong stamp duty system.

¹⁰⁹⁴ For example, see Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1967–68' (Hong Kong, Government Printer 1968), 17; Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1968–69' (Hong Kong, Government Printer 1969), 19; Hong Kong Commissioner of Inland Revenue, 'Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1981–82' (Hong Kong, Government Printer 1982), 24.

¹⁰⁹⁵ See section 3.4.5.

Cowperthwaite introduced an additional mechanism in 1967 against attempts to falsify the revenue and imposed an obligation on those who executed conveyances on sales, and who wished to take advantage of the reduced rates of duty, to certify that the transaction did not form part of a larger transaction, or of a series of transactions, on which duty would be payable at a higher rate.¹⁰⁹⁶ The law has remained to the present time as an integral part of the Hong Kong stamp duty system for nearly half a century.¹⁰⁹⁷ Nevertheless, there was only one example of this certification detected.

Promulgating a specific disclosure requirement for each and every taxable instrument to counter-evasion and underpin system sustainability was a relatively insignificant driver of Hong Kong stamp duty changes. In Hong Kong, methods to calculate stamp duty liabilities were kept fairly straightforward and usually based on the prescribed *ad valorem* or fixed rates applied to the values of the transactions with no other criteria affecting the calculation of the duties. This practice made unnecessary the prescription of lengthy counter-evasion rules to ensure disclosure of factors related to the instruments affecting the computation of duties. The evidence to support this observation was derived from the examination of tax computation methods for marine insurance policies of Britain and Hong Kong before World War II. In Britain, the British Stamp Act 1891,¹⁰⁹⁸ as well as the British Marine Insurance Act 1906,¹⁰⁹⁹ was clear that any marine policy had to disclose, apart from the sum insured, the number of voyages as well as the period of the journeys and other factors. This counter-evasion disclosure requirement was necessary and a driver for British stamp duty changes as the duties payable were dependent on these elements.¹¹⁰⁰ The Hong Kong stamp duty on marine insurance was based on an *ad valorem* duty applied to the sum insured only, which rendered statutory disclosure of other factors redundant. Consequently, this branch of counter-evasion law was never a driver for Hong Kong stamp duty changes.

The contextualisation of Hong Kong stamp duty history suggests that political resistance might suppress the government's desire to promulgate law to counter

¹⁰⁹⁶ Hong Kong Stamp Amendment Ordinance, No 28 of 1967, s 2.

¹⁰⁹⁷ Hong Kong Stamp Ordinance, No 31 of 1981, s 29.

¹⁰⁹⁸ 54 & 55 Vict c 39, s 93.

¹⁰⁹⁹ 6 Edw 7 c 41, s 23.

¹¹⁰⁰ British Stamp Act 1891 (54 & 55 Vict c 39), first sch.

stamp duty evasion. Further, it could be that the law formulated to encourage voluntary compliance was adequate to begin with in preventing the falsification of transaction values, as the entailing penalties and consequences of not reporting voluntarily in good faith, were daunting. As a whole, the evidence shows that the need to enhance system sustainability by preventing duty evasion was definitely a force in the development of Hong Kong stamp duty. It should be ranked as a middle-ranking force in shaping Hong Kong stamp duty law as some of the legislation introduced was significant and contributed substantially to countering stamp duty evasion. Nonetheless, the frequency of landmark stamp duty law being enacted in response to this imperative was still low during the 130 years of Hong Kong stamp duty history under British rule.

Legislative control of stamp duty avoidance

Having just been considering the stamp duty law with a focus on countering fraudulent evasion, we now turn to countering, or at least minimising stamp duty avoidance, the legal use of the law to lessen tax liability. In the following paragraphs the emphasis is shifted to considering whether the demand for stamp duty law to counter avoidance (thus enhancing sustainability) was a possible impellent in driving the Hong Kong Stamp Ordinance development.

The promulgation of specific counter-avoidance provisions for share trading was first seen in 1886. In that year, the Hong Kong Governor appointed a Special Stamp Duty Committee to consider the possibility of boosting revenue by marked increases in stamp duty rates to improve Hong Kong's defences. This was occasioned by the outbreak of the Sino-French War in August 1884. The British government had warned that French forces might attack Hong Kong and if so, Hong Kong was defenceless.¹¹⁰¹ However, the Special Stamp Duty Committee reported that 'no urgency exists for additional taxation at this time', but it may sanction an increase in stamp duties after reviewing the probable expenditures of the colony.¹¹⁰² The basis for this advice was attributable to the

¹¹⁰¹ Frank Welsh, *A History of Hong Kong* (London, Harper Collins 1997), 295. Sir Andrew Clarke, the Inspector-General of Fortifications and Director of Works of Britain, wrote to Hong Kong Governor Sir George Bowen and warned him that if the French Army attacked Hong Kong, Bowen would definitely become a prisoner based on his assessment that Hong Kong was defenceless.

¹¹⁰² Hong Kong Hansard 14 April 1886, 61.

ending of the Sino-French war on 9 June 1885 with the conclusion of the Treaty of Tientsin, in which France achieved most of her war objectives.

The original Ordinance to substantially increase stamp duty rates was thus withdrawn in May 1886 by the Administrator of Hong Kong William Marsh (in office 1885–1887). The object of the Hong Kong Stamp Ordinance 1886 was altered from ‘greatly increasing the stamp duties’ to ‘make a few slight alterations in the present legislation’ during the second reading.¹¹⁰³ Marsh was concerned about the avoidance of stamp duty on the transfer of shares of public companies. At that time, stamp duties on public share transactions were based on an *ad valorem* scale imposed on the transaction values stated on the contract notes.¹¹⁰⁴ Under this circumstance, taxpayers were given the opportunity to reduce their stamp duty liabilities by under-declaring the transaction values. The Stamp Office would not have been able to challenge the probable understatements as the law lacked declared benchmarks. Thus, instead of increasing stamp duty rates significantly, Marsh took the opportunity to introduce share trading anti-avoidance measures through enactment of the Hong Kong Stamp Ordinance 1886.¹¹⁰⁵ Marsh described this as a small amendment which ‘experience has shown to be necessary’ and ‘advantage will be taken of the circumstance’ to introduce in 1886.¹¹⁰⁶ The 1886 stamp duty legislation specified that the tax was to be computed on the market value of the shares on the day of stamping, instead of being calculated on the consideration entered into by the parties, as provided in the preceding legislation.¹¹⁰⁷ This was an advance in stamp duty anti-avoidance measures. It was the first time the Hong Kong law had used the concept of market value to prevent taxpayers from under-declaring the assessable basis of their taxable transactions.

It can be concluded from the analysis that the need for anti-avoidance law was a trivial driver in influencing stamp duty changes in the nineteenth century in Hong Kong for two reasons. First, there was only one largely inconspicuous

¹¹⁰³ Letter from William Marsh to Granville Leveson Gower (27 May 1886), CO129/226, 306.

¹¹⁰⁴ Hong Kong Stamp Ordinance, No 15 of 1884, sch. The applicable *ad valorem* duty was HK10¢ for every HK\$100 or part thereof.

¹¹⁰⁵ No 16 of 1886.

¹¹⁰⁶ Hong Kong Hansard 14 April 1886, 62.

¹¹⁰⁷ Hong Kong Stamp Ordinance, No 16 of 1886, schedule, head 36; Letter from William Marsh to Granville Leveson Gower (27 May 1886), CO129/226, 307.

occurrence of such a law being promulgated in the nineteenth century, a very specific anti-avoidance provision relating to share trading. Second, the evidence demonstrates that Marsh prescribed the anti-avoidance law hastily (during the second reading of the related Bill) which was totally unconnected with, and annulled, the original objective of raising revenue so that the passing of the Bill could be preserved.¹¹⁰⁸

Evaluating the history of Hong Kong stamp duty anti-avoidance provisions, the evidence reveals that it took nearly forty years for another development to emerge. It occurred during the inter-war years¹¹⁰⁹ to curb tax avoidance on the blank transfer of shares. A blank transfer is a transfer signed by the transferor, but with a blank for the name of the transferee. In a blank transfer neither the transferee's name and signature nor the date of sale are filed in the transfer deed. The transferee is at liberty to sell it to a subsequent buyer without inserting his name and signature. Thus, the physical holder of the certificate is assumed to be the new owner of the securities. The process of purchase and sale can be repeated any number of times with the blank deed and ultimately when it reaches the hands of one who wants to retain the shares can insert his name and date and have it registered in the company's books.

The prevalent Hong Kong stamp duty law in the early twentieth century was to levy a fixed nominal duty on the bought notes and the sold notes and to impose an *ad valorem* duty on the final instrument of transfer. For example, the Hong Kong Stamp Ordinance 1921¹¹¹⁰ provided that *ad valorem* duty of HK20¢ per HK\$100 or part thereof was chargeable on an instrument of transfer and a nominal fixed duty of HK\$2 was chargeable on the brokers' brought and sold notes.¹¹¹¹ Under this system, the *ad valorem* duty was avoided due to the accepted legalised custom existing in the colony of executing blank transfers to pass title through a series of buyers and sellers instead of executing fresh instruments of transfer at each stage. As such, many taxpayers were able to escape *ad valorem* stamp duty assessment with no consequences.

¹¹⁰⁸ Letter from William Marsh to Granville Leveson Gower (27 May 1886), CO129/226, 306.

¹¹⁰⁹ This relates to the period between the World War I and the World War II.

¹¹¹⁰ No 8 of 1921.

¹¹¹¹ Hong Kong Stamp Ordinance, No 8 of 1921, sch, head 40.

Attorney General Joseph Kemp's observation in 1921 is particularly revealing regarding the significance of the blank transfers problem at that time: 'The use of blank transfers obviously leads to a great many transfers of shares escaping duty.'¹¹¹² During the 1921 Kong Hong stamp duty reform, Kemp's first proposal to tackle this huge problem was to impose heavy penalties on transfers of shares registered at varying periods after execution. The Hong Kong Stockbrokers' Association rejected it on the basis that the stockbroking operation would be affected.¹¹¹³ During negotiations with the Association by Kemp, it was arranged that instead of enforcing the immediate registration of transfers, an increase to the stamp duty on share contract notes was preferred.¹¹¹⁴ The problem had not been solved as blank transfers were still unrestrained and cast doubt on the survivability of the stamp duty system with regard to share transactions.

In the second attempt to ameliorate the stamp duty law to reduce stamp duty avoidance arising from blank transfers, the Hong Kong government appointed a Committee constituted of trade and commercial representatives, chaired by Kemp, to devise a solution in 1929.¹¹¹⁵ Kemp introduced the Hong Kong Stamp Ordinance 1929¹¹¹⁶ with the main objective being to introduce anti-avoidance measures in respect of the blank transfer of shares. In this regard, the Legislative Council endorsed the recommendation of the Committee to reduce the evasion by passing a provision in the stamp duty legislation to disallow companies distributing dividends to an un-registered person.¹¹¹⁷ Previously, some companies would just distribute dividends to the holders of the physical share certificates.

The 1929 stamp legislation was not, however, effective as public share investors were willing to forgo the dividends on the presumption that trading gains would be more substantial. Registration of shares took time and during the process, trading opportunities would be lost. The deficiency of the law forced the government to conceive another piece of legislation.

¹¹¹² Hong Kong Hansard 25 April 1921, 36.

¹¹¹³ Letter from William Shenton to Thomas Southorn (2 February 1929), CO129/522, 26.

¹¹¹⁴ Hong Kong Hansard 25 April 1921, 42.

¹¹¹⁵ Letter from Cecil Clementi to Sidney Webb (23 December 1929), CO129/522, 6.

¹¹¹⁶ No 26 of 1929.

¹¹¹⁷ Hong Kong Stamp Amendment Ordinance, No 26 of 1929, s 6.

Meanwhile, the Japanese commenced its full-scale invasion of China in 1937, and the British government entered the World War II conflict in 1939. The Hong Kong Governor surrendered to the Japanese on Christmas Day 1941. Following the cessation of World War II hostilities, Hong Kong was re-occupied by Britain in 1945 and the Hong Kong government resumed the examination of the issue of the blank transfer of shares. The introduction of the Hong Kong Stamp Amendment Ordinance 1947¹¹¹⁸ was to secure revenue derived from stock exchange transactions by reversing the incidence of stamp duty so that *ad valorem* duty would be chargeable on brokers' brought and sold notes and the nominal duty reserved for the transfer deeds.¹¹¹⁹ This was more effective than the avoidance law implemented around twenty years before, barring companies from the distribution of dividends to anyone who had real equity interest but did not appear on the company's share register. It can be concluded that adjusting the incidence of tax was an effective way to curb avoidance of tax as the Hong Kong government did not consider any further legislative changes in this respect after 1947.

Besides highlighting the driving force behind the introduction of the aforementioned Ordinances, the discussion also demonstrates that in order to prescribe effective anti-avoidance rules, it was not enough for the legislators merely to engage in periodic review of commercial customs to attain an understanding of related operations. Greater weight had to be given to analysing the thoughts and viewpoints of the taxpayers. It took Hong Kong a quarter of a century to realise this. The incidence of tax for share transactions introduced in 1947 has been retained in the stamp duty system until the present day.

These analyses of the Hong Kong stamp duty anti-avoidance rules related to share trading, and were developed in 1929 and 1947. These rules can be compared to legislative provision made in 1992 to regulate dealings in real property, in order to demonstrate that the 1992 measures were driven by sustainability enhancement rather than a more obvious social aim.

¹¹¹⁸ No 38 of 1947.

¹¹¹⁹ Hong Kong Stamp Amendment Ordinance, No 38 of 1947, s 4.

The examination of the Hong Kong Stamp Amendment Ordinance 1992¹¹²⁰ indicates the dominant sustainability objective might not have been publicly declared. The government announced that the Hong Kong Stamp Amendment Ordinance 1992¹¹²¹ was enacted to fulfil a social imperative of controlling property speculation in order to stabilise housing prices, which would benefit genuine home buyers.¹¹²²

Based on the historical analysis of the Hong Kong anti-avoidance rules effected on share trading and comparing them to those regulations prescribed under the 1992 legislation, the following paragraphs seek to prove that the dominant impellent for the 1992 measures was sustainability enhancement rather than meeting a social aim.

There were three main instruments that were prepared for the sale of immovable properties in Hong Kong:

1. Temporary sale and purchase agreements (signed at the estate agent's office);
2. Formal sale and purchase agreements (signed at the buyer's and seller's respective law firms to confirm the temporary sale and purchase agreements);
3. Conveyances of property on sale (signed at the buyer's and seller's respective law firms to formally recognise the transfer of legal titles of the properties).

Before the amendments effected in 1992, stamp duty was only payable on conveyances of property on sale. This implied that the properties could change hands many times by entering into formal sale and purchase agreements between different parties for the same property without attracting any stamp duty. The 1992 legislation imposed stamp duty on each purchaser and vendor who entered into a formal agreement for the sale of immovable property and charged only a nominal sum on the final conveyance of property on sale. This

¹¹²⁰ No 8 of 1992.

¹¹²¹ Ibid.

¹¹²² Hong Kong Hansard 6 November 1991.

ensured stamp duty payable on residential property was not deferred until the conveyance was finally executed.

The Hong Kong government expressed the aim of the law was to curb speculative activity in the residential property market, by making stamp duty payable on sale and purchase agreements. The Secretary for The Treasury Yeung Kai-Yin (in office 1991–1993) remarked that the government was tackling a major social problem through amendments to tax legislation. According to Yeung, the 1992 amendments would provide a major disincentive for speculators. It would also benefit genuine home-buyers by restoring the balance of market forces which had been seriously distorted by speculative activity.¹¹²³

Many Hong Kong publications also perceived that the 1992 stamp amendments were conceived to meet the social imperative of curbing residential property speculation.¹¹²⁴ Nevertheless, the examination of Hong Kong stamp duty history demonstrates otherwise. The Hong Kong Stamp Amendment Ordinance 1992¹¹²⁵ focused on making changes to the incidence of tax on instruments relating to the sales of Hong Kong immovable residential properties. The doctrine of reversing the incidence of stamp duty applied in the 1992 amendments was identical to the principle utilised in the Hong Kong Stamp Amendment Ordinance 1947¹¹²⁶ in respect of share transactions. It can be recalled that the 1947 Stamp Ordinance was developed to curb stamp duty avoidance with the sole aim of sustaining revenue flow originally intended by the stamp duty law. The 1947 Stamp Ordinance was definitely not intended to suppress share-market speculation.

In this light, the evidence points to the demand for sustainability (comprising solvency as well as fairness objectives) intended by the stamp duty law at the outset, was a hidden dominant imperative in driving the introduction of the Hong

¹¹²³ Per Yeung Kai-Yin, Hong Kong Hansard 29 January 1992.

¹¹²⁴ CCH Tax Editors, *1996/1997 Hong Kong Master Tax Guide* (Hong Kong, CCH Asia Ltd 1996), 471; David Flux and David G Smith, *Hong Kong Taxation Law and Practice* (Hong Kong, Chinese University Press 1999), 529.

¹¹²⁵ No 8 of 1992.

¹¹²⁶ No 38 of 1947.

Kong Stamp Amendment Ordinance 1992.¹¹²⁷ The Ordinance was not introduced for the purposes of social demand in curbing property speculation as advocated by Yeung. It was intended as an anti-avoidance provision enacted for system sustainability. It is suggested that the reason for the government to steer the 1992 Stamp Ordinance through the Legislative Council as a piece of legislation enacted for a social objective, was to pre-empt political repercussions.

Further evidence to support the conclusion was that Hong Kong property market prices continued to escalate¹¹²⁸ after the introduction of the 1992 stamp duty measures, demonstrating the stamp duty policy failed to dampen speculation at the time. The property prices became so high that Governor Chris Patten's (in office 1992–1997) administration vowed to take measures to regulate the property market in 1994 by many key non-fiscal measures with the aim to suppress speculation.¹¹²⁹ Apparently, the reversal of tax incidence was not effective in curbing speculation.

The contextualisation of Hong Kong stamp duty demonstrates that the government did not develop any general anti-avoidance stamp duty legislation to enable the Collector of Stamp Duty to disregard transactions he considered falsified. It is possible that the colonial government adhered to the British ethos of not legislating in general terms against tax avoidance, a practice which was established in the eighteenth century and prevailed till the 1980s in Britain.¹¹³⁰

The study points to the demand for specific anti-avoidance provisions to maintain system sustainability, as an element in shaping the Hong Kong stamp duty law. Nonetheless, the evidence demonstrates that the need for specific anti-avoidance provisions to achieve sustainability was only a prominent driver

¹¹²⁷ No 8 of 1992.

¹¹²⁸ There were sharp increases in property prices in 1992 and 1993. See Hong Kong Government, 'Report of the Task Force on Land Supply & Property Prices, Planning, Environment & Lands Branch June 1994' (Hong Kong, Hong Kong Information Service Department 1994), executive summary & pt II.

¹¹²⁹ These measures include the cutting of quotas for private sales of uncompleted flats from 50% to 10%; prohibit resale of uncompleted flats before conveyance; restrict forward sales to not more than nine months before conveyance and increase initial deposit from 5% to 10% of the purchase price. For details, see Hong Kong Government, 'Report of the Task Force on Land Supply & Property Prices, Planning, Environment & Lands Branch June 1994' (Hong Kong, Hong Kong Information Service Department 1994), part VII.

¹¹³⁰ See section 2.3.8.

in moulding the stamp duty legislation for two types of transactions – documents for share trading and the conveyance of immovable properties. In this regard, the changes instituted in 1947 and 1992 respectively were retained as cardinal stamp duty mechanisms until the present day.¹¹³¹

As a whole, therefore, the examination indicates that the demand to ensure stamp duty system sustainability by promulgating anti-avoidance law was a minor influence based on the scope and occurrence of the related changes. This outweighed the significance of the 1947 and 1992 stamp duty law introduced.

4.2.5 Taxpayers' protection

It is generally accepted that the introduction of prosecution protection mechanisms¹¹³² as well as appeal process safeguards¹¹³³ to ensure compliance with the law by both taxpayers and stamp duty officials would circumvent resentment and lead to the sustainability of the entire system. This section assesses how far these mechanisms and safeguards were enacted for system sustainability, and the extent to which the demand for these processes to enhance sustainability was the motive force in shaping the Hong Kong stamp duty law. In addition, this section also deals with whether the mechanisms and safeguards so established were successful in maintaining the sustainability of the whole system.

These mechanisms and safeguards were crucial in maintaining sustainability as they upheld the fairness of the system by providing taxpayers with protection from wrongful prosecutions as well as recourse to alternative, and unbiased, rulings to test those emanating from the stamp duty officers in charge. Taxpayers might disregard the stamp duty law and refrain from complying if they were not protected from the excesses of the Hong Kong Stamp Office's immensely powerful organisation, thus undermining system sustainability. This subject was even more prominent, when Hong Kong stamp duty was made

¹¹³¹ Hong Kong Stamp Ordinance c 117 (Originally No 31 of 1981), s 19 and sch 1, note 2 of head 1(1A).

¹¹³² See section 2.3.7. Prosecution protection mechanism refers to the system in place to prevent unjust prosecution as well as the right to appeal against conviction.

¹¹³³ See section 2.3.7. Stamp duty assessment appeal process safeguards refer to granting of rights to aggrieved taxpayers to appeal to the regular courts or to an adjudicating body within the tax process itself against the assessment issued by the tax authority.

compulsory and the Collector of Stamp Duty was granted police powers in 1921 to ensure enforcement.¹¹³⁴ To further justify the demand, one of the factors that caused the American revolt against the imposition of stamp duty by Britain in 1765, was the lack of plausible mechanisms and safeguards instituted within the American stamp duty system prescribed by the British government.¹¹³⁵ In this light it can be concluded that the introduction of the relevant mechanisms and safeguards in the Hong Kong context would ensure the sustainability of the whole system by enforcing compliance by all and circumventing resentment.

The analysis is separated into two parts:

1. Development of assessment appeal process safeguards;
2. Development of prosecution protection mechanisms.

Assessment appeal process safeguards

It can be recalled that in the first Hong Kong Stamp Ordinance,¹¹³⁶ there was no explicit statement of the taxpayer's appeal channel.¹¹³⁷ The demand for an unambiguous directive in this area led to the amendment under the Hong Kong Stamp Ordinance 1884 which explicitly allowed an appeal to the Supreme Court of Hong Kong.¹¹³⁸ This change was probably stimulated by a development in Britain at that time, in response to a political demand, to allow an appeal on tax matters to regular British courts.¹¹³⁹

Subsequently, the need for judicial safeguards prompted legislative amendment to give the Chief Justice the power to direct stamp duty cases to be heard by the Full Court of two judges if he deemed it necessary.¹¹⁴⁰ There were no material changes to the judicial appeal channel except the stamp duty disputes were to be heard first by a lower District Court of Hong Kong set up in 1953¹¹⁴¹

¹¹³⁴ See section 3.3.7 and section 4.2.4.

¹¹³⁵ See section 2.4.1.

¹¹³⁶ Hong Kong Stamp Ordinance No 12 of 1866.

¹¹³⁷ See section 2.3.7.

¹¹³⁸ Hong Kong Stamp Ordinance No 15 of 1884, s 14.

¹¹³⁹ For a full account of the development in Britain at that time, see Chantal Stebbings, *The Victorian Taxpayer and the Law: A Study in Constitutional Conflict* (Cambridge University Press, 2009), 131–39.

¹¹⁴⁰ Hong Kong Stamp Ordinance No 8 of 1921, s 15(6).

¹¹⁴¹ Peter Wesley Smith, *An Introduction to the Hong Kong Legal System* (Hong Kong, Oxford University Press 1998), 68.

before appealing to the Supreme Court of Hong Kong.¹¹⁴² In any instances, in order to appeal to the Privy Council in Britain, leave to appeal was required either from the Supreme Court of Hong Kong or the Privy Council.

It can be recalled that from the beginning in 1866, the Hong Kong stamp duty system inherited the British tenet of lay adjudication.¹¹⁴³ The adjudication process was contributory in maintaining system fairness as it provided a platform for the taxpayers to obtain high quality judgments delivered by technically competent tax administrators. Taxpayers could be protected from unfair stamp duty treatment and thus increase their willingness to comply which, in turn, reinforced the integrity of the system thus maintaining its sustainability. Nonetheless, it has been said that the initial adjudication fee set at HK\$10 in 1866 was far too high for any taxpayer to contemplate using the service.¹¹⁴⁴ The demand for more equitable safeguards to ensure system sustainability drove the government to amend the law in 1868 to reduce the fee substantially from HK\$10 to HK\$1.¹¹⁴⁵

In the 1880s, the Hong Kong government was concerned as to the poor level of taxpayer satisfaction with the adjudication system, a factor which was of considerable importance in ensuring the sustainability of the stamp duty adjudication system. Accordingly, in 1886, the law was amended to direct the Collector of Stamp Duty to impress a particular stamp to denote that documents submitted to him were in his opinion not subject to tax.¹¹⁴⁶ This ensured the courts and public officers would receive such documents as properly stamped without further explanations being required from the taxpayers who had engaged the adjudication service. This approach improved taxpayers' satisfaction with the adjudication process and went some way to ensuring the sustainability of the adjudication system.

The change to the safeguard provision of the original stamp duty law in the quest for system sustainability was again seen in a minor amendment made in

¹¹⁴² Hong Kong Stamp Ordinance No 16 of 1961, s 4.

¹¹⁴³ See section 2.4.6.

¹¹⁴⁴ Hong Kong Stamp Ordinance, No 12 of 1866, s 20; see section 2.4.6.

¹¹⁴⁵ Hong Kong Stamp Amendment Ordinance, No 5 of 1868, s 1(2); Report of Commission on Hong Kong Stamp Ordinance 1866 (27 March 1868), CO129/131, 56.

¹¹⁴⁶ Hong Kong Stamp Ordinance, No 16 of 1886, s 11.

1984. The 1984 Hong Kong Stamp Amendment Ordinance [No 2] gave the Hong Kong District Court the right to appoint a member of the Land Tribunal to sit and assist in any proceedings to confirm stamp duty assessments related to immovable properties.¹¹⁴⁷ The aim of the amendment was the recognition that stamp duty litigation sometimes involved technical problems regarding the value of land. Some members of the Lands Tribunal had the expertise to assist in resolving those problems. The law enabled the District Court to call upon that expertise in deciding the appeals.¹¹⁴⁸ The appointment of an independent member of the Lands Tribunal would potentially safeguard the taxpayers from being taxed inequitably. In other words, the legislative changes enabled the judicial system to enhance its capability as an alternative recourse for taxpayers appealing against excessive stamp duty assessments on immovable properties. This would avert taxpayer resentment by improving system fairness and thus enhance system sustainability.

Prosecution protection mechanisms

The introduction of a law to bridge the stamp duty system with the colony's independent judicial system, conclusively indicated the demand for assessment appeal process safeguards that influenced the stamp duty legislation. In this context, a series of legislative amendments enacted, clearly demonstrated that the need for protecting the taxpayers from unwarranted prosecutions, was also a motive force in shaping the Hong Kong stamp duty code.

A minor legislative addition in response to the demand for a prosecution protection mechanism was introduced during the 1884 stamp duty reform and sustained until the 1980s. It was the rule that taxpayers should not be prosecuted for any offence after two years from the date of the offence.¹¹⁴⁹ The regulation was subsequently amended in 1968 in favour of the Collector of Stamp Duty by extending the period from two years to six years from the date of the offence.¹¹⁵⁰

¹¹⁴⁷ Hong Kong Stamp Amendment Ordinance [No 2], No 43 of 1984, s 2.

¹¹⁴⁸ Hong Kong Hansard 16 May 1984, 973.

¹¹⁴⁹ Hong Kong Stamp Ordinance, No 15 of 1884, s 22.

¹¹⁵⁰ Hong Kong Hansard 24 July 1968, 306; Hong Kong Stamp Amendment Ordinance, No 30 of 1968, s 21; Hong Kong Stamp Ordinance, No 31 of 1981, s 61.

Instead of enhancing the protection mechanism, the main¹¹⁵¹ object of the Hong Kong Stamp Amendment Ordinance 1915¹¹⁵² was to confirm that the consent of the Hong Kong Attorney General was no longer necessary to initiate prosecutions under the Stamp Ordinance,¹¹⁵³ which diminished taxpayers' protection. It has been revealed that the need to obtain prior approval from the Attorney General before prosecution was the protection that Governor Sir Richard MacDonnell (in office 1866–1872) had specifically incorporated into the original Hong Kong stamp duty system in 1866 to protect the Hong Kong taxpayers from the poor standard of judgment of the Hong Kong Magistrates.¹¹⁵⁴ It was necessary, as the Hong Kong Magistrates at that time usually had no formal legal training to render proper judgments on stamp duty matters.¹¹⁵⁵ After fifty years of development, the quality of training had improved and the Hong Kong government felt that the law in this area was out-dated and should be repealed. Nonetheless, the protective element in the Stamp Ordinance was weakened significantly. There would now be no constraint to prevent stamp duty officers abusing their powerful positions. It would infer that all stamp duty officers had the power to initiate prosecutions against the taxpayers. Ultimately, this would lead to taxpayer resentment and undermine public co-operation and in turn, result in an issue of sustainability. During the public consultation conducted by Hong Kong Attorney General Joseph Kemp (in office 1915–1930) in respect of the 1921 Hong Kong stamp duty reform,¹¹⁵⁶ the public bodies demanded the law be amended to introduce protection for taxpayers from unnecessary prosecutions. Kemp stated that it was proposed to add a clause into the Hong Kong Stamp Ordinance to the effect that 'no prosecution shall be instituted under this Ordinance except with the consent of the Collector' in order to 'prevent the initiation of prosecutions by unauthorised persons.'¹¹⁵⁷ The evidence shows that Kemp acceded to the demand for protection mechanism in order to ensure system sustainability.

¹¹⁵¹ Another object was to give the Governor power to authorise stamping after execution of documents that cannot be stamped after execution. See Hong Kong Stamp Amendment Ordinance, No 1 of 1915, s 2.

¹¹⁵² No 1 of 1915.

¹¹⁵³ Hong Kong Stamp Amendment Ordinance, No 1 of 1915, s 3.

¹¹⁵⁴ See section 2.3.7; Hong Kong Stamp Ordinance, No 12 of 1866, s 29.

¹¹⁵⁵ See section 2.3.7.

¹¹⁵⁶ Hong Kong Stamp Ordinance, No 8 of 1921.

¹¹⁵⁷ Hong Kong Hansard 25 April 1921, 42.

Another event that justified the need for protection mechanisms with regard to the stamp duty system occurred in 1921. In the context of raising revenue, it can be recalled that Kemp introduced the power of inspection which aimed to decrease evasion and strengthen voluntary compliance.¹¹⁵⁸ Initially the intention of the Hong Kong government was to allow the Collector to search premises without the need to seek authorisation from the Court as a delay might result in a relevant document not being found, or being not able to prevent a person from 'attempting to throw a document into fire'.¹¹⁵⁹ Clearly, this vested enormous power in the tax bureau and left the public open to persecution at the hands of a corrupt Collector. The unofficial members protested in the Legislative Council and entered into a lengthy debate with the Governor and other government officials. The government relented and introduced a protection. It was agreed that Stamp Office inspection exercises should only be carried out with a Magistrate's search warrant.¹¹⁶⁰ This was the first and only significant Hong Kong debate conducted in the Legislative Council on stamp duty prosecution protection mechanisms. It shows the awareness of the need for such mechanisms as the government began to compel the compulsory payment of stamp duty with penal sanctions, and conferred police power on the Collector of Stamp Duty. It is concluded that the mechanism introduced was fair, as in all Hong Kong cases dealing with smuggling in 1921 required a search warrant issued by the Court when the smuggling of goods was suspected.¹¹⁶¹ There was no reason why the Stamp Office Officers should be exempted from applying for a warrant if they had just cause for inspecting taxpayers' premises.

The evidence establishes that the demand for assessment appeal process safeguards as well as prosecution protection mechanisms was only a minor driver of the Hong Kong stamp duty changes in the quest for sustainability. The reason is that the most significant advancement made in this area had already been made in 1884 by explicitly linking the stamp duty system with the independent Hong Kong judicial system. Once appeals to regular courts were formally permitted, there was no record of any strong demand to reform the Hong Kong stamp duty law to deal with conflicts between dissatisfied taxpayers

¹¹⁵⁸ See section 3.3.6.

¹¹⁵⁹ Hong Kong Hansard 25 April 1921, 50.

¹¹⁶⁰ Ibid.

¹¹⁶¹ Per Henry Pollock, Hong Kong Hansard 25 April 1921, 50.

and the Collector of Stamp Duty from 1884 until the reversion of sovereignty in 1997. It can also be concluded that the few changes made to the stamp duty system were adequate and effective in maintaining system sustainability by focusing on the taxpayers' concerns about how the stamp duty disputes were to be handled fairly.

4.2.6 Relief and exemption

An investigation into stamp duty policy reveals that relief and exemption might have played a part in the furtherance of the stamp duty system's sustainability. On the one hand if such exemption was granted properly and fairly, it would suppress taxpayers' resentment towards the system and help to preserve sustainability. On the other hand, if stamp duty immunity was granted unfairly and extensively, the taxpayers would feel contempt for the system and this could threaten its sustainability.¹¹⁶²

The investigation of Hong Kong stamp duty history shows that there were numerous occasions when the law was amended due to demands for customary exemptions of duty for certain transactions by consulate members, charitable organisations and the Sino-British Joint Liaison group¹¹⁶³ members.¹¹⁶⁴ Evaluation of the political processes regarding these exemptions reveals that there were no Legislative Council debates recorded on the passing of the amending law. In any event, no opposition was expected for three reasons. First, the public would not perceive the granting of such customary exemptions as generating undesirable advantages, since the beneficiaries were not expected to be involved in commercial or speculative activities. Second, the consulate members and the Sino-British Joint Liaison group members were few

¹¹⁶² For an account of how exemption and tax immunity generated negative social effects and caused tax system sustainability problems, see Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilization* (2nd edn, Lanham, Maryland, Madison Books 1999), 13–15.

¹¹⁶³ A meeting group formed in 1985 between the Governments of the United Kingdom of Great Britain and Northern Ireland and the People's Republic of China after signing of the Sino-British Joint Declaration, a treaty for the transfer of sovereignty of Hong Kong from Britain to China. It was set up for liaison, consultation and the exchange of information to implement the Joint Declaration and make smooth, the transfer of Hong Kong Government in 1997.

¹¹⁶⁴ See for example, the Hong Kong Stamp Amendment Ordinance, No 23 of 1976, which gave stamp duty exemption to conveyances of consular premises; Hong Kong Stamp Amendment Ordinance, No 61 of 1984, which gave stamp duty exemption to transactions concluded by the Chinese Visa Office; Hong Kong Stamp Amendment Ordinance, No 18 of 1985, which gave stamp duty exemption to the Joint Liaison Group; Hong Kong Stamp Amendment Ordinance No 36 of 1989, which gave stamp duty exemption to transactions concluded by the International Committee of Red Cross.

and the exemptions would have an insignificant effect on the overall stamp duty income. Third, the community was predisposed to embrace the exemptions granted to charitable organisations as ultimately such exemptions benefited the poor and the needy. The evidence suggests that the granting of customary exemptions would neither enhance nor impair system sustainability. They were essentially inconsequential changes, and as such were not drivers in the overall Hong Kong stamp duty legislative changes.

The only key stamp duty change detected as being driven by a demand to grant an exemption, was promulgated in 1968. The government found the proposal by commercial bodies to alleviate stamp duty burden between associated companies to be reasonable and believed it would uphold the fairness (and thereby enhance the sustainability) of the stamp duty system.¹¹⁶⁵ The Hong Kong Stamp Amendment Ordinance 1968¹¹⁶⁶ introduced stamp duty relief for the transfer of assets between associated companies. This was designed to ease the process of company reorganisation. It was the requirement of this exemption that one firm had beneficial ownership of not less than 90% of the other. Shares and marketable securities transactions between associated companies were originally not covered when the law was first introduced in 1968.¹¹⁶⁷ It was modelled on the British stamp duty law.¹¹⁶⁸ The law had evolved to define companies as associated if a third such body was the beneficial owner of not less than 90% of the issued share capital of each. In addition, share transactions between associated companies were granted exemption from duty in 1991 in respect of stock transfers upon restructuring of their intra-group shareholdings.¹¹⁶⁹

This combined body of evidence thus shows that any demands for exemption and relief were insignificant drivers in the development of Hong Kong stamp duty. Besides the customary exemptions identified, there were no other key changes made apart from the aforementioned relief granted to transactions

¹¹⁶⁵ Hong Kong Hansard 26 June 1968, 297.

¹¹⁶⁶ No 30 of 1968.

¹¹⁶⁷ Hong Kong Hansard 26 June 1968, 297; Hong Kong Stamp Amendment Ordinance, No 30 of 1968, s 3.

¹¹⁶⁸ Finance Act 1930 (20 & 21 Geo 5 c 28), s 42.

¹¹⁶⁹ Per Piers Jacobs, Hong Kong Hansard 6 March 1991, para, 157; 1991 Hong Kong Stamp Amendment Ordinance, No 43 of 1991, s 6.

between associated companies during the 130 years of British rule to maintain system sustainability. The evidence demonstrates that the Hong Kong government adhered to the principle of not acceding to pressure groups' demands to grant unnecessary exemptions so as to avoid the creation of a privileged class of taxpayers. It has been shown that such entitlement could have provoked other taxpayer groups to demand favourable tax treatments which might impair sustainability.¹¹⁷⁰ Thus, it can be concluded that perhaps it was the government's caution exercised in this area of the stamp duty law that enhanced the sustainability of the entire stamp duty system.

4.2.7 The relative importance of sustainability as a driver for stamp duty changes

The evidence demonstrates that in the nineteenth century there were few instances when the colonial government amended the law exclusively to ensure system sustainability. Such amendments were passed to link the stamp duty system with the judicial system, or to ameliorate the adjudication provisions as well as to offer convenience to taxpayers. Similarly, the evidence reveals that in the first half of the twentieth century, there were stamp duty laws written to enhance sustainability. However they were mainly executed on an ad hoc basis concurrently with the Hong Kong government's stamp duty revenue procurement measures. Clear evidence to support this observation was the introduction of the Hong Kong Stamp Ordinance 1921¹¹⁷¹ which spawned many revolutionary methodologies to prevent revenue dissipation while the government set about significantly increasing the stamp duty rates under the same Ordinance.¹¹⁷²

After World War II, the evidence demonstrates that the Hong Kong government might have pioneered a proactive administrative approach to ensure timely stamp duty legislation was promulgated to ensure the sustainability of its stamp duty system. Evidence to support this notion was identified in the Legislative Council records. Financial Secretary Philip Haddon-Cave (in office 1971–1981) remarked that the law governing the Hong Kong tax system at large had to be 'adapted from time to time consistent with commercial practices'.¹¹⁷³ In addition, he explained that the government's general policy was to ensure each and

¹¹⁷⁰ See section 3.3.8.

¹¹⁷¹ No 8 of 1921.

¹¹⁷² See section 3.3.7.

¹¹⁷³ Per Philip Haddon-Cave, Hong Kong Hansard 1 March 1978, 540.

every levy – be it direct or indirect – was simple and easy (and therefore inexpensive) to administer for both government and taxpayer and did not encourage evasion, for a low and narrowly-based tax system simply could not afford to finance costly overheads.¹¹⁷⁴ As a result of this general direction on tax policy, not-for-revenue improvements to stamp duty law were made frequently from the 1960s onwards and some of these were for the enhancement of system sustainability.¹¹⁷⁵

Haddon-Cave further confirmed this stamp duty tradition when he moved the second reading of the 1972 Stamp Amendment Ordinance.¹¹⁷⁶ He said:

Hardly a year passes, Sir, when the Stamp Ordinance is not amended, not in any fundamental sense but there are always, it seems, loopholes to be closed, anomalies to be removed and obscurities to be clarified. This bill is in that honourable tradition.¹¹⁷⁷

Moreover, Haddon-Cave said in his 1978 Hong Kong budget speech: ‘Statute law cannot keep pace with commercial practice and economic reality in a rapidly changing world. Our Stamp Ordinance has been amended no less than twenty-one times in the last ten years alone.’¹¹⁷⁸

As a whole, the evidence demonstrates that the number of legislative changes associated with each of the six factors traditionally regarded as necessary to ensure sustainability – offering convenience, offering comprehensibility, discerning jurisdictions, establishing noncompliance counter measures, introducing taxpayer’s protections and prescribing relief and exemptions – were generally small on an individual basis. Only the combined effect of these sporadic occurrences made them a significant class of imperatives.

Although prolific as a class, the analysis shows that the legislative changes in response to the demand to maintain sustainability often appeared as minor amendments with only a few exceptions. The evidence confirms that repeated

¹¹⁷⁴ Ibid.

¹¹⁷⁵ There were twenty-three stamp duty amendments made during the 1960s and 1970s. On average, the government passed more than one stamp duty amendment per year.

¹¹⁷⁶ No 2 of 1972.

¹¹⁷⁷ Per Charles Haddon-Cave, Hong Kong Hansard 5 January 1972, 307.

¹¹⁷⁸ Per Charles Haddon-Cave, Hong Kong Hansard 1 March 1978, 556.

reviews initiated by the government after World War II contributed to the stability of the stamp duty system. Nonetheless, a large portion of the resulting changes were repealed before the reversion of sovereignty in 1997.

As such, it is submitted that sustainability as a driver of stamp duty legislative changes was less powerful than the financial, social and economic imperatives.¹¹⁷⁹ Nevertheless, sustainability was more powerful than other minor influences underlying the development of the tax, to be discussed in the latter part of this chapter.

4.2.8 The general threats to stamp duty system sustainability

Given the apparent lack of concerted effort by the government throughout the history of the Hong Kong Stamp Duty to initiate ground-breaking legislation to ensure the sustainability of the stamp duty system, it must be seen how the system was sustained in practice. In order to do so, the Hong Kong stamp system will be compared with the initial implementation of stamp duty in Mainland China nearly fifty years after it was first introduced into Hong Kong.

The introduction and operation of stamp duty in Mainland China under the late Qing court and the Republic of China is of key significance. First, it contributes to the understanding of the Chinese attitude to the implementation of stamp duty as mentioned in the imperial Qing court discussion records.¹¹⁸⁰ Second, it provides an insight into how Hong Kong stamp duty legislation could be sustained and emerged as an important revenue source in Hong Kong. This is effected by analysing the problems and pitfalls of the less successful stamp duty execution in the neighbouring Mainland China, from the time of the Qing administration in late nineteenth century until the Chinese Communist Party defeated the Kuomintang government in 1950. Understanding the drawbacks of implementing stamp duty in China in its early stages helps to identify the

¹¹⁷⁹ See section 3.6.

¹¹⁸⁰ The imperial Chinese Qing court discussions were mainly in the form of memorials. Memorials were submitted to the emperor by high-ranking officials during the Qing dynasty. The emperor would return to the sender once he had reviewed and annotated them with his comments in vermilion ink. All memorials that had been commented by the emperor were to be returned to the palace archives for storage. Officials were forbidden from keeping them in private possession. With the use of a centralized storage system during the Qing dynasty, copies of the Qing court memorials were available in major libraries in China and Hong Kong today.

elements embedded in the Hong Kong stamp duty system that would prevent a repetition of the Chinese experience in Hong Kong.

Chinese stamp duty was first introduced in 1909 by the Qing government.¹¹⁸¹ This was the first form of tax that China copied from the west. According to the Qing imperial court's discussion records the Qing mandarins advocated the introduction of stamp duty in China as it could help to reform the China tax system by eliminating some old fashioned taxes. Further, the tax rates were low but a large number of taxpayers would fall into the stamp duty net to provide an enormous governmental income. In addition, the government perceived stamp duty as the least likely mechanism to instigate a revolt by the Chinese taxpayers. The Qing court perceived the stamp duty tax as the most likely to be sustained as compared to other choices.¹¹⁸² Two years after the implementation, the Qing dynasty was replaced by the Republic of China. During the Republic of China era, the Chinese stamp duty law gave rise to numerous conflicts that frustrated system sustainability.

The British tenet of taxation only with representation

The Chinese government frequently issued administrative orders to interpret the law and to amend it. Administrative orders were also regularly employed to increase tax rates on existing assessable items and to designate additional items to be taxed. This led to strong opposition from the taxpayers.¹¹⁸³ For example, in 1914, the Ministry of Finance of the Chinese government amended the stamp duty rates by announcing an executive order approved by the President of China without any parliamentary discussion. The change was effected by a mere announcement. This fuelled vehement objections from trade associations and citizens in all major Chinese provinces as the effect was that stamp duties were levied on all transactions of less than ten dollars, transactions that were previously exempted. The strength of objection led to the suspension of the executive order.¹¹⁸⁴ Citizens demanded that stamp duty law

¹¹⁸¹ Lixin, 饒立新, *Zhongguo Yin Hua Shui Yan Jiu 中國印花稅研究* [Study on Stamp Duty of China] (Beijing, Zhongguo Shui Wu Chu Ban She 2009), 61.

¹¹⁸² Ibid 33–34.

¹¹⁸³ Ibid 96.

¹¹⁸⁴ Zhiqing Duan and Pan Shoumin 潘壽民, *Zhongguo Yin Hua Shui Shi Gao 中國印花稅史稿* [History of Chinese Stamp Duty] (Shanghai, Shanghai Gu Ji Chu Ban She 2007), 68.

and its amendments must seek consensus in the Chinese parliament. It was not proper to promulgate the law by an order issued by the Ministry of Finance.¹¹⁸⁵

The erosion of the stamp system sustainability, caused by the Chinese government through its recurrent administrative orders to interpret the law and to increase duties in the early twentieth century, was prevented in Hong Kong by the adoption of the principle of taxation only with representation inherited by the Hong Kong government.¹¹⁸⁶

The contribution of English case law to the system sustainability

English law was introduced to Hong Kong on 5 April 1843, the day that Queen Victoria granted the Letters Patent to Hong Kong. The formula adopted by the colonial government was to adapt a comprehensive collection of Britain's enacted statutes and judicial decisions and apply them in Hong Kong. The general approach was to automatically receive the English law that existed on 5 April 1843. However, any English law that was considered inappropriate and unsuitable for Hong Kong was excluded.¹¹⁸⁷

The Hong Kong Supreme Court Ordinance 1873¹¹⁸⁸ reaffirmed that statutes passed by the British Parliament after 5 April 1843 had no application in Hong Kong unless specifically adopted as local Ordinances.¹¹⁸⁹ This raised the question whether English judicial decisions delivered after 5 April 1843 were also applicable in Hong Kong. The 1873 Hong Kong Supreme Court Ordinance provided no answer.¹¹⁹⁰ In practice, all English judicial decisions were applicable in Hong Kong until China resumed the exercise of sovereignty in 1997. The reason for this was that English judicial pronouncements subsequent

¹¹⁸⁵ Ibid 69.

¹¹⁸⁶ See section 2.4.2.

¹¹⁸⁷ In 1843, the Letters Patent granted the Hong Kong Governors the right to make and enact laws and Ordinances for the Peace, Order and good Government of the Colony of Hong Kong. In 1873, The Hong Kong Supreme Court Ordinance, No 3 of 1873 formally incorporated the formula for introducing English law into Hong Kong. The Hong Kong Supreme Court Ordinance No 3 of 1873, s 5–8 was explicit that only English law (and not Scots law) was adopted. See also Peter Wesley Smith, *An Introduction to the Hong Kong Legal System* (Hong Kong, Oxford University Press 1998), 39.

¹¹⁸⁸ Hong Kong Supreme Court Ordinance, No 3 of 1873.

¹¹⁸⁹ Ibid s 5.

¹¹⁹⁰ Ibid.

to the cut-off date merely declared what had always been the law.¹¹⁹¹ After the 1997 handover, in line with Article 8 of the Hong Kong Basic Law, the English case law previously in force, and the basis for interpretation of many Hong Kong Ordinances before the handover, remained as the accepted authority. English case law, determined after the 1997 handover, was not binding in Hong Kong. All the important judicial decisions on stamp duty with lasting value and decided before 1997, mostly originated in Britain. As discussed, these remain applicable in Hong Kong to the present day.

There were two cases that were heard before 1945 that imparted principles that were instrumental in upholding the stamp system sustainability rather than being merely technical clarifications. In the absence of these fundamental principles, the entire Hong Kong stamp duty system would wither because both the Stamp Office as well as the taxpayers' rights would not be adequately safeguarded.

*Carlill v Carbolic Smokeball Co*¹¹⁹²

In order to avoid stamp duties, some traders on Mainland China refrained from preparing taxable contracts or documents in commercial dealings. In the interest of preventing the loss of revenue attributable to such avoidance activities, the Republic of China stamp duty administrators diverged from the general principle of taxing documents. Instead, they levied stamp duty based on the perceived trades involved. In essence, the nature of the stamp duty had changed to that of business turnover tax.¹¹⁹³ In other words, the Republic of China government deviated from the general principle for taxing documents and levied stamp duty on trade transactions even if the related taxable documents were absent. The effect was undesirable as the revenue authorities were given the power arbitrarily to define what matters were subject to stamp duties based on the transactions effected and not on related documents. There was a complete breakdown of the taxpayers' protection for stamp duty matters and the tax authorities could potentially abuse their immensely powerful position. The

¹¹⁹¹ Peter Wesley Smith, *An Introduction to the Hong Kong Legal System* (Hong Kong, Oxford University Press 1998), 39.

¹¹⁹² [1892] 2 QB 484; aff'd [1893] 1 QB 256.

¹¹⁹³ Lixin Rao, *Zhongguo Yin Hua Shui Yan Jiu* 中國印花稅研究 [Study on Stamp Duty of China] (Beijing, Zhongguo Shui Wu Chu Ban She 2009), 96.

principle derived from the British decision of *Carlill v Carbolic Smokeball Co* effectively stopped this undesirable practice.

The case was heard in Britain in 1892. The Carbolic Smokeball Company manufactured and sold the Carbolic Smokeball. The company placed an advertisement in various newspapers offering a reward of £100 to any person who used the smokeball three times per day as directed and contracted influenza. After seeing the advertisement, Carlill purchased a ball and used it as directed. Carlill contracted influenza and made a claim for the reward. The Company refused to pay and Carlill sued for damages arising from breach of contract.

The High Court was asked whether the advertisement, which was the only written document effecting the transaction, was required to be stamped as an agreement before it could be admitted in evidence.¹¹⁹⁴ Under the 1891 British Stamp Act at that time, an agreement needed to be stamped before it could be admitted as evidence.¹¹⁹⁵ The court held that:

No document requires an agreement stamp unless it amounts to an agreement, or a memorandum of an agreement. The mere fact that a document may assist in proving a contract does not render it chargeable with stamp duty; it is only so chargeable when the document amounts to an agreement of itself or to a memorandum of an agreement already made. A mere proposal or offer until accepted amounts to nothing. If accepted in writing, the offer and acceptance together amount to an agreement; but, if accepted by parol, such acceptance does not convert the offer into an agreement nor into a memorandum of an agreement.¹¹⁹⁶

The cardinal rule derived from this decision was that stamp duty was levied on taxable written instruments, and not on transactions. In the case, the non-taxable written advertisement offer would not change its character to a taxable written agreement by virtue of the fact that the transaction had actually been effected orally or by conduct. There would not be any question of stamp duty if

¹¹⁹⁴ [1892] 2 QB 484 at 488.

¹¹⁹⁵ British Stamp Act 1891 (54 & 55 Vict c 39), first sch.

¹¹⁹⁶ [1892] 2 QB 484 at, 490 (Hawkins J).

the chargeable document was non-existent.

The decision in *Carlill v Carbolic Smokeball Co* provided the stamp duty payers with protection¹¹⁹⁷ as the government's power to tax was restricted. It was also in the interests of the government to have this protection as the absence of such safeguard could lead to tensions and consequent expression of taxpayers' resentment. Furthermore, the safeguard also enhanced compliance and public co-operation.¹¹⁹⁸ The ethos of the decision definitely contributed to the sustainability of the Hong Kong stamp duty system.

*Limmer Asphalte Paving Co v IRC*¹¹⁹⁹

The previous case demonstrates how the undesirable effect of revenue authorities, being given the power to arbitrarily determine the taxable sums for stamp duty purposes based on transactions and not on documents, was curbed by the application of English case law.

It is also observed that reciprocally, erosion of the system sustainability also occurred when the taxpayers' right to define the nature of their instruments was unchecked. Under the stamp duty system, different instruments were subject to different duty rates. A simple way to escape liability was to label a taxable instrument as a certain non-taxable instrument or an instrument chargeable with lower duties. The stamp duty system would not be sustainable if all taxpayers were permitted freely to define the nature of their instruments. The principle which originated in *Limmer Asphalte Paving Co v IRC* effectively restricted such freedom and as such constituted a major contribution to the sustainability of the Hong Kong stamp duty system.

The case was heard in Britain in 1872. The court was asked to determine whether an instrument granting an exclusive right to use Limmer Asphalte Paving Co's asphalt for £7,500 within Lancaster and Chester was a deed or a

¹¹⁹⁷ For instance, in the absence of the *Carlill v Carbolic Smokeball* decision, if a person purchased a pack of Carbolic Smokeball in 1892 London, the parties needed to pay a receipt stamp on the receipt issued and at the same time the tax department had the right to demand stamp duty on the unwritten sales and purchase agreement based on the effected transaction. The result would be perplexing.

¹¹⁹⁸ Chantal Stebbings, *The Victorian Taxpayer and the Law: A Study in Constitutional Conflict* (Cambridge University Press 2009), 3.

¹¹⁹⁹ (1872) LR 7 Ex 211.

conveyance of a right. The issue was contentious as under the 1870 British Stamp Act, a deed was only subject to a fixed 10s duty whereas a conveyance was subject to an *ad valorem* duty and the expected duty payable by the taxpayers was around £37.¹²⁰⁰

Martin B laid down the principle:

In order to determine whether any, and if any what, stamp duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be ascertained; that the description of it given in the instrument itself by the parties is immaterial, even although they may have believed that its effect and operation was something other than what the courts affirms.¹²⁰¹

This case set the general principle of stamp duty law that the liability to stamp duty was determined by the substance rather by the form of the instrument. The name given to the instrument by the taxpayer was irrelevant; the liability was determined by the true underlying nature of the transaction effected.

This could be viewed as an effective anti-avoidance law. It was an unambiguous message to taxpayers that they could not label their instruments freely to derive a tax benefit. Indeed, this judge-made law thwarted behaviours that would, if unchecked, threaten the sustainability of the stamp duty system. In Hong Kong today, this principle is still of great importance. In particular, a lease which grants an exclusive right of possession is chargeable with stamp duty, while a license which confers a non-exclusive right of possession is duty free under the current Hong Kong Stamp Ordinance.¹²⁰²

The body of evidence suggests that for countries contemplating a stamp duty system as a source of revenue, the ideologies underlying these principles should be legislated in the absence of the established English case law system.

British unwritten stamp duty guidelines

¹²⁰⁰ British Stamp Act 1870 (33 & 34 Vict c 97), sch.

¹²⁰¹ (1872) LR 7 Ex 211 at, 214–15.

¹²⁰² Hong Kong Stamp Ordinance c 117 (Originally No 31 of 1981).

In order to raise revenue, the Chinese provincial governments printed adhesive stamps excessively. The officials were more interested in selling the adhesive stamps than ensuring the stamps were used according to law. In order to accelerate stamp sales, provincial governments appointed stamp distributors, which were usually business establishments. They were given a good margin in the business of adhesive stamp distribution. The result was the devaluation of the stamps since taxpayers could obtain the stamps at a discount from the stamp distributors. In the long run, stamp duty became nominal since the market price for the stamps was way below their face value due to the discounts entailed with the distribution method and abundant market supply.¹²⁰³

In a way, the Hong Kong stamp duty sustainability was maintained by adhering to certain unwritten British stamp duty tenets which prevented harmful policies from gaining a foothold and thus threatening the sustainability of the system. The British government did not permit the Hong Kong government to print its own stamps. All stamps were to be printed in London with strict control by the home government to circumvent the temptation of the colonial government to sell excess stamps at a discount through appointed stamp distributors during financial exigencies. This was not written into the Hong Kong Stamp Ordinance and was only revealed by the letters between the Hong Kong Governors and the Colonial Office.¹²⁰⁴

Governors' near absolute authority

This section turns to an assessment as to whether the near absolute authority granted to the Hong Kong Governors in relation to stamp duty matters was a possible class of factor which maintained the sustainability of the stamp duty system.

It can be recalled that, in 1868, Governor Sir Richard MacDonnell (in office 1866–1872) appointed a Commission of Inquiry (the Commission) to discuss the amendment of the Stamp Ordinance with the Hong Kong General Chamber

¹²⁰³ Lixin Rao, *Zhongguo Yin Hua Shui Yan Jiu* 中國印花稅研究 [Study on Stamp Duty of China] (Beijing, Zhongguo Shui Wu Chu Ban She 2009), 97.

¹²⁰⁴ Letter from Richard MacDonnell to Henry Herbert (10 September 1866), CO129/115, 56–59.

of Commerce (the Chamber of Commerce).¹²⁰⁵ During the meeting with the members of the Chamber of Commerce, the Commission expressed the view that the government would make a very material reduction to the stamp duties levied on bills of exchange by substituting the original fixed rate with an *ad valorem* scale. However, to make up the loss, the Commission suggested new chargeable instruments which included: average statements, godown-orders, bank cheques, inward bills of lading, treasury bills of lading to ports out of China, and insurance policies. The Commission stressed that the objective of the amendments was about restoring vertical equity and not about enhancing revenue.¹²⁰⁶

The Chamber of Commerce debated the Commission's proposal. One notable motion was to keep the schedule of heads of charge unchanged, and ensure any expansion.¹²⁰⁷ However, the members favoured more motions for lower tax rates for some instruments. For example, the motion for reducing the tax rate on bills of exchange from HK\$1 to HK3¢¹²⁰⁸ received the greatest support from the Chamber of Commerce members. There were some recommendations from the Chamber of Commerce. First, was the proposal to reduce tax rates for all existing instruments.¹²⁰⁹ Second, was to allow taxpayers a fourteen-day grace period to have documents stamped without a fine.¹²¹⁰ The members objected to all additional heads of charge proposed by the Commission except for a small tax on insurance policies.¹²¹¹

MacDonnell rejected all the Chamber of Commerce's stamp duty demands without providing any reason, and did so with no repercussions. The public was not able to remove him at any election. It was evident from the commencement of the Hong Kong stamp duty system that the Governor had near absolute power in terms of stamp duty legislative matters due to the unique system of government, which enabled him to disregard public pressure in the event he deemed it essential to tackle predicaments as determined by him.

¹²⁰⁵ See section 3.3.1.

¹²⁰⁶ The Hong Kong General Chamber Of Commerce General Meeting, In Re: The Stamp Act (20 March 1868), CO129/131, 58.

¹²⁰⁷ Ibid 59.

¹²⁰⁸ Ibid.

¹²⁰⁹ Ibid 58–59.

¹²¹⁰ Ibid 60.

¹²¹¹ Ibid.

The ethos was unchanged after one hundred years when in 1974 Governor Sir Murray MacLehose (in office 1971–1982), rejected the joint petition from the four recognised stock exchanges in Hong Kong to reduce the rate of stamp duty on contract notes in respect of share transactions forthwith, in response to the adverse economic conditions.¹²¹²

The evidence demonstrates that the absolute power granted to the Hong Kong Governors made possible under an election-free political environment had significant influence on how the stamp duty law was shaped in the colony. This unique system, constrained only by appointed (unelected) Legislative Council unofficial members, enabled the government to concentrate on making the right tax strategies rather than on politically correct tax decisions and maintain system sustainability. After all, only the Colonial Office could remove the Governors and other senior officials and not the public.

It can also be deduced that in order for this political structure supporting the Hong Kong stamp duty system to be credible and sustainable, the quality of the Governors was of paramount importance. In this regard, the British government had a proven and reliable system for selecting capable candidates with integrity and political intelligence to take up office as Governor. For example, in the twentieth century, the Colonial Office maintained a 'List A' consisting of selected Administrative Officers of less than 55 years of age who were suitable to take up governorships. Once there was a vacancy, the Colonial Office would select a few candidates from 'List A' for the Secretary of State for the Colonies to make the choice. Thereafter, the British Prime Minister would make the final decision before submitting it to the monarch for formal consent. The Colonial Office also maintained a 'List B' consisting of younger Administrative Officers who had shown potential to be appointed as Colonial Secretaries.¹²¹³ They could be upgraded from 'List B' to 'List A' once they had exceeded expectations in their positions as Colonial Secretaries.¹²¹⁴

¹²¹² Hong Kong Hansard 5 June 1974, 887.

¹²¹³ Colonial Secretary was the second in command of a British colony ranked only under the Governor within the governing structure of a colony.

¹²¹⁴ Anthony Kirk-Greene, *On Crown Service: A History of HM Colonial and Overseas Civil Services 1837–1997* (London, I B Tauris 1999), 101–102; P K Li 李彭廣, *Guan Zhi Xianggang*:

4.3 Political imperatives

Sustainability imperatives thus form the first class of secondary imperatives driving the development of the Hong Kong stamp duty. The second class of such lesser imperatives was political in nature. The inter-relationship between the political history of Hong Kong and the history of Hong Kong stamp duty changes gave rise to two major lines of enquiry. First, was whether the demand for stamp duty changes drove advancements in the Hong Kong political processes and methods. Second, was the extent to which the resultant changes in the political processes and methods to create and approve the law shaped the Hong Kong stamp duty legislation.

It has been seen that the legislative process during the 1866 introduction of stamp duty was proposed by the government, scrutinised by the Legislative Council unofficial members and endorsed by the Colonial Office.¹²¹⁵ It is also clear that public resistance by the British merchants was not uncommon with regard to the introduction of revenue laws in Hong Kong.¹²¹⁶ The progress made in the methods used by the Hong Kong government to surmount these political roadblocks to promulgate stamp duty legislation must be examined. Of particular interest is how the Hong Kong government managed to steer the attitude of the Legislative Council unofficial members in order to pre-empt the Hong Kong public from opposing everything related to stamp duty in the early colonial days, and to adopt a more co-operative attitude beginning from the twentieth century. It must be established whether these political changes had any effect on how the stamp duty law was formulated in Hong Kong.

4.3.1 Stamp duty and Hong Kong constitutional development

The introduction of stamp duty in 1866 led to events in history that had a strong influence on Hong Kong's constitutional development. After the implementation of the Hong Kong Stamp Ordinance 1866¹²¹⁷ on 10 October 1867, the law was challenged as taxation without representation.¹²¹⁸

Yingguo Jie Mi Dang An De Qi Shi 管治香港：英國解密檔案的啟示 [Governing Hong Kong Insights from the British Declassified Files] (Hong Kong, Oxford University Press 2012), 3–4.

¹²¹⁵ See section 2.4.2.

¹²¹⁶ See section 2.2.2.

¹²¹⁷ No 12 of 1866.

¹²¹⁸ Minutes on Letter from Richard MacDonnell to Richard Grenville dated 14 October 1867 (24 December 1867), CO129/125, 30.

A reform association¹²¹⁹ was established in 1867 with Alfred Sinnett,¹²²⁰ a local newspaper editor, as its secretary and leader. The reform association appealed directly to the British Parliament to demand the abolition of the stamp duty law on the basis that the decision to impose stamp duty in Hong Kong was contrary to the wishes of the Hong Kong community.¹²²¹ Sinnett proclaimed in a local newspaper, *The Hong Kong Daily Press*, that: 'the Stamp Ordinance was frightening the Chinese and would drive Chinese traders away from the Colony'.¹²²² He was deeply against using the Stamp Duty Ordinance to raise revenue for a military contribution to Britain.¹²²³ He advocated the suspension or abolition of the Hong Kong stamp duty legislation, and demanded a more representative government. He put his demands directly to the British Parliament without informing the Hong Kong government.¹²²⁴

Sinnett's actions taken against the implementation of stamp duty in Hong Kong were bound to be unsuccessful for two reasons. First, the British Parliament refrained from debating any tax issues arising from British colonies after the American Stamp Duty Act Crisis leading to the American Independence War.¹²²⁵ All colonial taxation matters were left to the discretion of the Secretary of State for the Colonies and the respective Governors.

Second, it was the Secretary of State for the Colonies who attended to Sinnett's petition. Sinnett had unwisely linked the new Hong Kong stamp duty with military contribution.¹²²⁶ In fact, it was the Colonial Office that demanded the military contribution. It was unlikely that the Secretary of State would agree to the suspension of the implementation of the 1866 Hong Kong Stamp

¹²¹⁹ The reform association was formed partly due to the passing of The Representation of the People Act 1867, 30 & 31 Vict c 102 in Britain. It was a piece of British legislation that enfranchised part of the urban male working class in England and Wales for the first time.

¹²²⁰ Alfred Sinnett was born on 18 January 1840. Sinnett was admitted to the London University (now University College London) as a scholarship student, but left without finishing his studies. He learned mechanical drawing, and worked briefly as a draftsman until he eventually obtained a position as assistant and sub-editor of *The Globe*, an evening newspaper in Britain. Late in 1865, he accepted the editorship of the 'Hong Kong Daily Press', where he worked in Hong Kong for three years.

¹²²¹ G B Endacott, *Government and People in Hong Kong, 1841-1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 86.

¹²²² Editorial, 'The Stamp Act' *Hong Kong Daily Press* (Hong Kong 25 January 1867), 2

¹²²³ G B Endacott, *Government and People in Hong Kong, 1841-1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 86.

¹²²⁴ *Ibid* 87.

¹²²⁵ See section 2.4.2. The war refers to American Independence War (1775-1783).

¹²²⁶ Editorial, 'The Daily Press' *Hong Kong Daily Press* (Hong Kong 14 September 1867), 2

Ordinance. Evidence can be found in the correspondence between Governor Sir Richard MacDonnell (in office 1866–1872), and the Colonial Office in which MacDonnell protested that the military contribution demanded by the Colonial Office would negatively affect him balancing the Hong Kong budget.¹²²⁷ Ultimately, the officials at the Colonial Office succeeded in convincing MacDonnell to accept the demand for military contribution and MacDonnell remarked: ‘Unquestionably, it is a just contribution and compared with that of Singapore an extremely light one’.¹²²⁸ Unknown to MacDonnell, the Colonial Office official scribbled beside MacDonnell’s remark: ‘admitted for the first time’.¹²²⁹

Though not able to reverse the Colonial Office’s approval for Hong Kong stamp duty, Sinnett’s petition and his articles in the local press were significant in that they led to discussions on constitutional reform in Hong Kong. There was a general demand for a more representative government. At that time, the Hong Kong Legislative Council consisted of the Governor, four official members and three unofficial members.¹²³⁰ In a report sent to the Secretary of State for the Colonies in 1869 regarding the demand for a more representative government, MacDonnell stated that the community at large was indifferent to the subject and constitutional reform was neither practicable nor desirable. Due to the difference in language, religion, custom and interest, adding more British unofficial members would not lead to a more representative government.¹²³¹ On the other hand, the ethnic Chinese could not be appointed as they could not be trusted with British confidential information, in case of a breakdown in Anglo-Chinese relations.¹²³²

Despite the rejection of constitutional reform by MacDonnell, there were improvements in the Hong Kong government. First, the views of the unofficial members of the Hong Kong Legislative Council on financial matters received

¹²²⁷ Letter from Richard MacDonnell to Henry Herbert (10 September 1866), CO129/115, 33.

¹²²⁸ Ibid.

¹²²⁹ Ibid.

¹²³⁰ In 1866, the members were the Governor Sir Richard MacDonnell, the Acting Chief Justice Henry John Ball, the Acting Colonial Secretary W H Rennie, the Attorney General Julian Pauncefoot, the Colonial Treasurer F H A Forth, and three prominent British merchants James Whittall, John Dent, H B Gibb, all Britons.

¹²³¹ G B Endacott, *Government and People in Hong Kong, 1841–1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 87.

¹²³² Steve Tsang, *A Modern History of Hong Kong* (Hong Kong University Press 2004), 27.

more attention after Sinnett's petition.¹²³³ Second, successive Governors drew lessons from the events of 1866 and answered the public demand for a more representative government by appointing more British Legislative Council unofficial members before the end of the nineteenth century.¹²³⁴ In 1880, the first Chinese unofficial member was also appointed.¹²³⁵

4.3.2 The importance of skilful politics and procedural justice

The appraisal of the events after Sinnett's 1867 petition shows clearly that the petition was a driver for political development in response to stamp duty revenue demand. The evidence demonstrates that the petition had an immediate influence on how the Hong Kong government introduced stamp duty changes to enhance revenue.

Governor Sir Richard MacDonnell piloted the Hong Kong Stamp Amendment Ordinance 1868¹²³⁶ in order to raise revenue.¹²³⁷ In contrast to the enactment of the earlier Hong Kong Stamp Ordinance 1866,¹²³⁸ MacDonnell refrained from announcing publicly his real financial intentions in making the 1868 amendments. Sinnett's petition had an impact on how MacDonnell steered the Hong Kong Stamp Amendment Ordinance 1868¹²³⁹ through the legislative process to circumvent political resistance. MacDonnell's logic was simple: revenue-yielding changes concealed under the shelter of non-revenue enhancing alterations would not attract another petition.

In order to achieve his real revenue aims, it has been seen that MacDonnell labelled the 1868 stamp duty amendment an exercise to improve fairness and equity for taxpayers.¹²⁴⁰ MacDonnell also appointed Phineas Ryrie as a member of a Commission formed to make recommendations to correct imperfections and restore equity. Ryrie was an unofficial member of the

¹²³³ G B Endacott, *Government and People in Hong Kong, 1841–1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 87.

¹²³⁴ Steve Tsang, *A Modern History of Hong Kong* (Hong Kong University Press 2004), 27.

¹²³⁵ Ibid. Ng Choy was appointed in 1880 as the first Chinese Legislative Council unofficial member in the history of Hong Kong. He was born in British Singapore, educated in Britain where he was called to the bar.

¹²³⁶ No 5 of 1868.

¹²³⁷ See section 3.3.1.

¹²³⁸ No 12 of 1866.

¹²³⁹ No 5 of 1868.

¹²⁴⁰ See section 3.3.1.

Legislative Council and the Chairman of the Chamber of Commerce.¹²⁴¹ Since Ryrie was at the helm of the most influential British business association in Hong Kong at that time, it was anticipated that he might fend off the protest by the British business community on new provisions targeted at revenue. Since MacDonnell agreed to the majority of the suggestions by the Commission on restoring vertical equity, the other two unofficial members, William Keswick and J P Duncanson¹²⁴² had reservations about launching a protest. The Hong Kong Stamp Amendment Ordinance 1868 was passed in the Legislative Council with no opposition and the public did not protest.

This analysis of the events leading to the 1868 stamp amendment legislation reveals the importance of the Hong Kong government's successful adoption of procedural justice. Though the true aim of the amendment was revenue enhancement,¹²⁴³ by initiating the process of establishing a commission and consulting the Chamber of Commerce, the amendment was ultimately well received by the legislators and the general public. To the general public, perception was reality. They did not challenge the publicly-stated aim of restoring equity through the amendment.

MacDonnell's display of political skill facilitated many equity restoration provisions to be written into the stamp duty legislation.¹²⁴⁴ They were used as a smokescreen to enable the introduction of the revenue-raising provisions. Without the Sinnett petition, it is doubtful whether MacDonnell would have been keen to restore equity, as the public did not seek it. Such equity-restoration stamp duty provisions would not have been introduced but for the political effects of the Sinnett petition.

For the purpose of this study, MacDonnell's arrangement also reveals the concept that the demand for stamp revenue drove developments in political method. Conversely, the resultant developments in political methods affected the way in which the Hong Kong stamp duty legislation was written.

¹²⁴¹ The Hong Kong General Chamber Of Commerce General Meeting, In Re: The Stamp Act (20 March 1868), CO129/131, 58.

¹²⁴² British heads of prominent trading firms Jardine, Matheson & Co and Gibb, Livingston & Co, respectively.

¹²⁴³ See section 3.3.1.

¹²⁴⁴ Ibid.

4.3.3 Delayed response to the Colonial Office's inquiries

From the foundation of Hong Kong till the end of World War II, any enacted legislation in Hong Kong was subject to the final endorsement of the Colonial Office.¹²⁴⁵ The appraisal of the early Hong Kong stamp duty history in the nineteenth century identifies an unorthodox way to circumvent the political demands of the Colonial Office.

Hong Kong historian Frank Welsh remarked: 'It might have been possible to find a man more unsuited to be a colonial Governor than John Pope Hennessy (in office 1877–1883), but it would not have been easy.'¹²⁴⁶ Indeed, the historical study of Hong Kong stamp duty below suggests he was a difficult person with whom to communicate and work. Nonetheless, the evidence also suggests that he might not have been completely 'wanting in sound judgement and common sense' as suggested by Lord Kimberley, the Secretary of State for the Colony,¹²⁴⁷ at least insofar as it related to stamp duty matters.

In 1877, Hennessy was eager to secure stamp duty payments from the Chinese community to enhance revenue collection. He was relentlessly formulating schemes to encourage as well as ensure that the Chinese contributed their rightful shares.¹²⁴⁸

Hennessy, in a letter to the Secretary of State dated 21 August 1877, informed London that he planned to sanction a Chinese Stamp Agency to facilitate the sales of stamps to the Chinese; however, he advised that he would temporarily suspend the plan pending further consultation.¹²⁴⁹ In direct contrast, in his letter dated 9 October 1877 to the Secretary of State, Hennessy announced that he had already started a Chinese Stamp Agency on 18 July 1877.¹²⁵⁰ The senior colonial officer attending to Hennessy was bewildered at the conflicting information and demanded an explanation.¹²⁵¹ This is typical of the widely

¹²⁴⁵ See section 2.4.2.

¹²⁴⁶ Frank Welsh, *A History of Hong Kong* (London, Harper Collins 1997), 255.

¹²⁴⁷ *Ibid* 256.

¹²⁴⁸ See section 3.3.2.

¹²⁴⁹ Letter from John Pope Hennessy to Henry Herbert (21 August 1877), CO129/178, 586.

¹²⁵⁰ Letter from John Pope Hennessy to Henry Herbert (9 October 1877), CO129/179, 208.

¹²⁵¹ Minutes on operation of the Chinese Stamp Agency (19 November 1877), CO129/179, 207.

accepted view of historians that Hennessy habitually made indefinite and inaccurate statements and lacked management skills.¹²⁵²

Hennessy replied by letter, one and a half years after the founding of the Chinese Stamp Agency, with information regarding the operation of this establishment.¹²⁵³ Because many questions posed by the Colonial Office regarding the Agency remained unanswered, the senior Colonial Office official remarked that he 'did not feel competent to offer any remarks as to the mode of collecting the revenue'. The Secretary of State agreed, but the Chinese Stamp Agency had been in operation for more than a year and it was 'hardly worthwhile pursuing the matter' with Hennessy.¹²⁵⁴ It was not an exceptional event of administrative oversight and the Colonial Office preferred not to pursue it further, anticipating that it would probably lead nowhere.

On the one hand, Hennessy's actions reflect that he was administratively inefficient and left correspondence from the Colonial Office unattended. On the other hand, rather than being judged administratively inefficient, perhaps Hennessy's actions may have been a calculated strategic ploy, even if somewhat devious, to give the Agency time to establish itself, believing the Colonial Office would be unlikely to unwind it after the extended passage of time.

Again, the evidence demonstrates that the quest for stamp duty revenue drove the introduction of new political methods to circumvent disagreement, although in this case, the technique was deceitful. At the same time, the substance of the Hong Kong Stamp Ordinance was shaped by Hennessy's political response to the demand for stamp revenue. It was apparent that in order to avoid the need to obtain political sanction from the Colonial Office to establish the Chinese Stamp Agency, Hennessy did not enact the regulation he conceived for the agency, such as how the stamp duty distributor should be identified and appointed as well as how the distributor's margin should be determined and

¹²⁵² G B Endacott, *A History of Hong Kong* (London, Oxford University Press 1958), 170–71; Frank Welsh, *A History of Hong Kong* (London, Harper Collins 1997), 255.

¹²⁵³ Letter from John Pope Hennessy to Michael Hicks Beach (20 May 1879), CO129/184, 421.

¹²⁵⁴ Minutes on Establishment of a Stamp Agency for the Chinese (26 July 1879), CO129/184, 418.

settled.¹²⁵⁵ The rules were not formally written into the Hong Kong Stamp Ordinance due to political considerations, as the Colonial Office might not have approved Hennessy's formulation should such legislation be submitted to them. Hennessy's action was improper as it was apparent that legislative sanction was needed even to confer power to the Governor to establish subsidiary government Stamp Offices to distribute stamps later on in 1884.¹²⁵⁶

4.3.4 Finance Committee inauguration

With an improved economy and resources available in the 1880s to recruit better-trained civil servants, unlike his predecessors, Governor Sir George Bowen (in office 1883–1887) was no longer alone in introducing tax legislation. No doubt the Governor was still the only person who had the absolute discretion to dictate the Bills that could reach the Legislative Council, but he worked with the Colonial Secretary, the Colonial Treasurer and the Attorney General (all *de facto* official members of the Legislative Council) as a team to pilot the tax Bills through the Legislative Council with the Attorney General taking the lead. It was in this political context that Bowen introduced the 1884 Hong Kong Stamp Ordinance.¹²⁵⁷

The stamp duty reform of 1884 reinforces the finding that the need to circumvent political opposition continued to be an imperative in the history of Hong Kong stamp duty. In order to pre-empt strong opposition to the Stamp Duty Bill 1884 during Legislative Council debates, Bowen announced that a Finance Committee would be set up in accordance with the practice in other British colonies. The committee should comprise the whole Legislative Council, except the Governor, to examine in the first instance¹²⁵⁸ the details of every proposed vote in relation to the revenues and expenditures of the colony before debating them formally in the Legislative Council.¹²⁵⁹ The Bill for the Hong Kong Stamp Ordinance 1884¹²⁶⁰ was subjected to this process.

¹²⁵⁵ See section 3.3.2.

¹²⁵⁶ Hong Kong Stamp Ordinance, No 15 of 1884, s 2.

¹²⁵⁷ No 15 of 1884.

¹²⁵⁸ In fact the first ever Finance Committee was established in 1872 by Sir John Pope Hennessy but it would only consider questions submitted to it by the Governor. See, G B Endacott, *Government and People in Hong Kong, 1841-1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 85.

¹²⁵⁹ Hong Kong Hansard 28 February 1884.

¹²⁶⁰ No 15 of 1884.

The analysis of the 1884 stamp legislation shows that Bowen followed MacDonnell's practice of concealing the real financial intention by stressing that the legislation was introduced for some other dominant purposes in order to ensure the consensus of the Finance Committee before putting the Bill to a formal debate. MacDonnell claimed his 1868 stamp duty amendments were solely for equity restoration. To build on the concept, Bowen stressed that his 1884 stamp duty reform was to restore equity as well as to simplify the stamp duty law and offer convenience.¹²⁶¹

It is arguable that without any agenda to curtail political opposition, the government would not be able to introduce the many detailed stamp duty legislative changes to promote the various non-financial objectives. As an illustration, Bowen might only effect a law to add new chargeable instruments into the stamp duty schedule without spending considerable time in tempering other areas of the law to seek a smooth legislative process.¹²⁶²

The Bill was consequently passed successfully in the Legislative Council with no heated debate.¹²⁶³ The reason for this was that all differences had been resolved in Finance Committee private discussions and the real financial intention was less obvious.

4.3.5 The creation of trust

Before the 1890s, the tactics used by Governors to avert political opposition against financially-driven stamp duty amendments were usually deceptive, shielding the real revenue aims with equity restoration and other inducements as well as to engage in insincere discussions with the pressure groups. Although the evidence proves that the Governors succeeded in gaining acceptance, there was a question as to how many times the Hong Kong government could continue using the same strategy to avoid political opposition against stamp duty changes to enhance revenue. This could not go on forever without being detected. In order to ensure that any trust between government and taxpayer was not entirely undermined by such political tactics, the

¹²⁶¹ See section 3.3.3.

¹²⁶² Ibid.

¹²⁶³ Hong Kong Hansard 23 April 1884.

government had to find a way to ensure new Stamp Duty Ordinances openly disclosed their real financial objectives without provoking undue opposition.

An assessment of historical stamp duty records indicates the driving force of the governorship of Sir William Robinson (in office 1891–1898) was to encourage a heightened sense of trust between the taxpayers and the government with regard to Hong Kong's fiscal system.

Robinson introduced the Hong Kong Stamp Amendment Ordinance 1894¹²⁶⁴ to meet revenue exigencies occasioned by natural disasters.¹²⁶⁵ In piloting his stamp duty proposal through the legislative process, Robinson commissioned a retrenchment committee to suggest alternatives to cut government expenditures to complement the increase in stamp duty. The retrenchment committee subsequently produced a report to highlight the overpaid jobs, the over-manned posts and overspent administrative expenditures in the Hong Kong government.¹²⁶⁶ This was an important medium by which to create trust in the Hong Kong government to facilitate the acceptability of increased stamp duties, rates and other fees. Without established trust, it was difficult for the public to consent to collective actions by government. A similar ideology for reducing government spending to create trust in the state to enhance legitimacy was put forward by William Gladstone in nineteenth century Britain, and this had become central to the notions of British liberty and identity.¹²⁶⁷ Robinson understood the British approach and implemented it in Hong Kong. This result, once again, affirms that stamp revenue demand drove the advancement of Hong Kong's political methods to steer the implementation of stamp duty law away from political resistance.

A political imperative was again material in influencing how the Stamp Ordinances were drafted. With the creation of trust, Robinson was the first Governor able to instigate straightforward amendments to enhance revenue by merely introducing new instruments and increasing existing duty rates without provoking uproar. Once the political opposition was effectively pre-empted by

¹²⁶⁴ No 13 of 1894.

¹²⁶⁵ See section 3.3.5.

¹²⁶⁶ Hong Kong Hansard 28 November 1894, 3.

¹²⁶⁷ Martin Daunt, *Trusting Leviathan: The Politics of Taxation in Britain, 1799–1914* (Cambridge, Cambridge University Press 2001), 59.

the creation of trust, the design for stamp duty legislation to raise revenue could be simple and direct without unnecessary cover to conceal the actual intention.

There is evidence that subsequent Hong Kong governments successfully followed this British principle of creating trust. As an illustration, in 1961, when Hong Kong faced severe deficits due to compelling public works, Financial Secretary Arthur Clarke (in office 1951–61) informed the Legislative Council that he had applied the ‘brakes to expenditures’ with a view to gaining support for his revenue-generating measures.¹²⁶⁸ First, he forbade heads of government departments from spending more than one half of their voted provision during the first six months of the year without his special permission. Second, they were prohibited from spending any money without his prior approval in each case. Clarke insisted that for granting approval, full justification for the expenditure had to be supplied, and it had to be shown that the proposals were not extravagant. Third, departmental heads were ordered to save 10% of their recurrent provision.¹²⁶⁹ These measures were effective in securing support from the unofficial members, and his stamp duty augmentation law¹²⁷⁰ faced little resistance. These measures also enabled the 1961 revenue-enhancing stamp duty law to be direct without the need for any concealment of the underlying financial motive.¹²⁷¹

4.3.6 Restriction of legislative time

The restriction of legislative time refers to a situation in which the government manipulated the processing of Bills in an effort to achieve political expediency. In other words, the government proposed amendments to stamp duty legislation, with a view to limiting the opportunities for Legislative Council members or the public to propose changes liable to decelerate or thwart the passing of the Bill.¹²⁷² An examination of the Hong Kong Stamp Amendment Ordinance 1902¹²⁷³ focuses on the exigencies of legislative time, and whether it was desirable to restrict discussion time for stamp duty legislation.

¹²⁶⁸ Hong Kong Hansard 1 March 1961, 38.

¹²⁶⁹ Ibid.

¹²⁷⁰ Hong Kong Stamp Amendment Ordinance, No 16 of 1961.

¹²⁷¹ See section 3.3.10.

¹²⁷² John H N Pearce, ‘The Rise of the Finance Act: 1853-1922’ in Peter Harris and Dominic de Cogan (eds), *Studies in the History of Tax Law vol 7* (Oxford, Hart Publishing 2015), 71.

¹²⁷³ No 38 of 1902.

During the Legislative Council Meeting on 9 October 1902, Governor Sir Henry Blake (in office 1898–1903) tabled his financial estimates for the year 1903, predicting a substantial deficit of around HK\$1 million on the estimated 1903 annual revenue of around HK\$4.6 million. Thus it was essential for the government to obtain a loan. Blake informed the unofficial members that in order to service the loan and provide for the ensuing interest expenditures, stamp duty had to be increased.¹²⁷⁴

Blake explained that the deficit was mainly due to the Bubonic plague that attacked Hong Kong about the turn of the century. In 1901, the epidemic was so bad that many Europeans lost their lives and many Chinese began to leave the colony. The demand for an enquiry led to the dispatch of two specialists from Britain, Professor W J Simpson to deal with the plague, and Osbert Chadwick to deal with sanitation, drains and housing. Their report recommended extensive work on water supply and drainage. In addition, the joint report highlighted that:

Too many houses are crowded on too small a space; that the tenement houses are occupied by too many people, and that the design of Chinese tenement houses hitherto authorised by law is so faulty as to be in a high degree insanitary.

Furthermore, Professor Simpson concluded the plague was spread by rats and again advised that the houses should be re-designed.¹²⁷⁵

Blake informed the Legislative Council unofficial members that he was determined to end the annual recurrence of plague in the colony. First, he decided to increase public works extensively in accordance with the report. Second, he decided to expend significant funds, estimated at HK\$40,000, to displace a number of people and for whom compensation and accommodation must be provided elsewhere. The government recovered land previously sold for redevelopment for the 'ultimate reconstruction of the city on a more sanitary system'.¹²⁷⁶ Third, Blake had set up a bacteriological department in the colony that employed Japanese experts to examine the rats and other health-related

¹²⁷⁴ Hong Kong Hansard 9 October 1902, 56.

¹²⁷⁵ Ibid 55–56.

¹²⁷⁶ Ibid 56.

matters.¹²⁷⁷ Immediately after his explanations, he introduced the Bill for the Hong Kong Stamp Duty Amendment Ordinance 1902.

The evidence shows that Blake spent much time in the Legislative Council demonstrating the connection between the estimated increase in stamp revenue and the benefits that the public would gain from the government initiatives. With the re-establishment of trust by Blake, providing the cost-benefit analysis of the Bill at its first reading fulfilled a political demand to prevent obstructive opposition. During the second reading of the Bill on 20 October 1902, the Colonial Secretary Henry May (in office 1902–1911), explained the intention to double or treble the tax rates for most heads of charge.¹²⁷⁸ He said: ‘The fees under the Stamp Ordinance are in the majority of cases the same today as they were in 1868, and having regard to the great fall in exchange¹²⁷⁹ it seems requisite that they should now be increased.’¹²⁸⁰ By examining the Bill, it can be concluded that what May had said was accurate.¹²⁸¹ The legislator was careful not to earmark those heads of charge that had been hit by an increase in tax rates after the 1868 Hong Kong Stamp Duty Amendment Ordinance.

With a political agenda to achieve a swift passing of the stamp duty law, the 1902 amendment to the stamp duty structure was clearly designed to enable the unofficial members to make a speedy decision with minimal deliberation required. The feedback received was either to agree with May’s simple reasoning and pass the proposed Bill with no discussion, or to object and discuss on what basis the tax rates should be levied. There was no requirement

¹²⁷⁷ Hong Kong Hansard 20 October 1902, 59; G B Endacott, *A History of Hong Kong* (London, Oxford University Press 1958), 279.

¹²⁷⁸ See section 3.3.6.

¹²⁷⁹ He was referring to the devaluation of the silver-based Hong Kong currency due to a rapid fall in silver prices during the late nineteenth century. See G B Endacott, *Government and People in Hong Kong, 1841-1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 117.

¹²⁸⁰ Hong Kong Hansard 20 October 1902, 62.

¹²⁸¹ See Appendices I and II. The heads of charge with tax rates that remained unchanged during the 1902 exercise were Head 1: Adjudication fees, Head 5: Arbitration awards, Head 15: Bonds concerning respondentia and bottomry, Head 17: Charter parties, Head 21: Conveyances, Head 27: Duplicates or counterparts, Head 29: Foreign attachment bonds, Head 32: Leases at a premium, Head 34: Leases at a rent, Head 41: Policies of insurance, Head 43: Probates and letters of administration, Head 46: Servant security bonds and Head 47: Settlements. These included a few heads of charge that had seen a tax rate increase after the introduction of the 1868 Hong Kong Stamp Amendment Ordinance. Tax rates for Head 13: Bills of exchange, Head 38: Mortgages and Head 51: Transfers of share in any public company were earmarked for increase notwithstanding that they had been altered after the promulgation of the 1868 Hong Kong Stamp Amendment Ordinance.

to conduct lengthy debates regarding the unfamiliar new legal operations or the merits of novel heads of charge.

The government achieved the expected outcome as only one unofficial member, George Playfair, asked for the second reading of the Bill to be postponed as he anticipated public uproar.¹²⁸² The government rejected his request and highlighted the lack of further legislative time due to the urgency of the proposal. The Colonial Secretary remarked: 'It is already late in the year, and the Bill should be on its way home [Colonial Office in London] if we expect to get on with the public works at early date next year.'¹²⁸³ The government, in forcing a speedy enactment without allowing further legislative time, warned the unofficial members that any delay in passing the law would delay public works and cause further deaths due to the recurrence of plague. The Hong Kong Stamp Amendment Ordinance 1902¹²⁸⁴ was passed, with only minor amendments to the tax rates, on 23 October 1902.

The Colonial Office senior officials who examined the proposed 1902 stamp legislation were of the opinion that some of the stamp duty rates such as those levied on co-partnership deeds, declarations of trust and instruments under seal passed by the Hong Kong Legislative Council, were unreasonably high compared to those in Britain.¹²⁸⁵ Nevertheless, the Colonial Office refrained from vetoing the Hong Kong Stamp Amendment Ordinance 1902¹²⁸⁶ and resolved that it was 'undesirable to raise any objection or direct any amendment reducing the contemplated increase of revenue'.¹²⁸⁷

This shows that the Hong Kong government engineered a situation to restrict opportunities for the proposal of lengthy amendments which might slow down the progress of the stamp duty legislation enactment. This was clearly politically motivated. The evidence shows that this imperative resulted in defects in the revenue law which the Colonial Office had noticed but refrained from

¹²⁸² Hong Kong Hansard 20 October 1902, 62.

¹²⁸³ Ibid 63.

¹²⁸⁴ No 38 of 1902.

¹²⁸⁵ Minutes on Hong Kong Stamp Ordinance, No 38 of 1902 (24 November 1902), CO129/313, 161.

¹²⁸⁶ No 38 of 1902.

¹²⁸⁷ Minutes on Hong Kong Stamp Ordinance, No 38 of 1902 (24 November 1902), CO129/313, 161.

commenting upon. These legislative defects driven by political demands contributed to the failure of the 1902 amendment to achieve its expected revenue objective.¹²⁸⁸ The crucial point identified is, that political expediency to overcome the exigencies of legislative time in enacting revenue law, could give rise to legal defects which may have cumulative effects if not subsequently remedied.¹²⁸⁹

It was nine years later that the Hong Kong government corrected the defects of the immoderately raised duties. The 1911 Hong Kong Stamp Amendment Ordinance substantially decreased the tax rates for co-partnership deeds, declarations of trust and instruments under seal.¹²⁹⁰ The reduction was induced in consequence of representation by the Hong Kong Law Society which pointed out the related duties were prodigiously excessive.¹²⁹¹

The examination of the political process of the 1921 Hong Kong Stamp Ordinance¹²⁹² provides a direct contrast to the approach adopted in 1902. It reveals that one of the factors that contributed to the sustainability of the 1921 stamp legislation until 1981 was the non-restriction of legislative time. The unofficial members were given sufficient time to go through the new legislation slowly, phrase by phrase, to make the law acceptable and sustainable. The colonial government even allowed an extra Legislative Council session to discuss the Stamp Bill. Instead of the usual three sessions, it was changed to four.¹²⁹³

4.3.7 The power of consultation

The evaluation of whether political imperatives drove Hong Kong stamp duty development, points to genuine public consultations as another vehicle for making sensible and politically acceptable stamp duty decisions.

¹²⁸⁸ See section 3.3.6.

¹²⁸⁹ For a British perspective on a similar issue see John H N Pearce, 'The Rise of the Finance Act: 1853-1922' in Peter Harris and Dominic de Cogan (eds), *Studies in the History of Tax Law* vol 7 (Oxford, Hart Publishing 2015), 71.

¹²⁹⁰ No 34 of 1911, s 15. The tax rate for co-partnership deeds was reduced from HK\$25 to HK\$5. The tax rate for declarations of trust and instruments under seal was reduced from HK\$30 to HK\$10.

¹²⁹¹ Letter from Frederick Lugard to Lewis Harcourt (31 August 1911), CO129/379 199.

¹²⁹² No 8 of 1921.

¹²⁹³ Hong Kong Hansard 14 April 1921.

The role of consultation raised four specific sets of questions. First, what was the government's main reason for engaging in consultation and were there other goals fulfilled by consultation? Second, what were the characteristics of the parties called upon by the government to seek opinions and were the government's selection criteria efficacious? Third, how were the consultation processes affected by the stamp duty law and did the consultation produce constructive stamp duty dogma? Fourth, what was the improvement made to the consultation system and how was it possible?

Regarding the first question, namely the reason the government engaged in consultation, the examination of the public legislative records as well as the private letters between the Governors and the Colonial office, revealed that the reason for engaging in the first genuine consultation of 1894 under the governorship of Sir William Robinson (in office 1891–1898) was to ensure the taxpayers were complaisant with regards to the proposed stamp duty legislation to enhance revenue. Robinson proposed the tax rate for insurance policies be increased from HK10¢ to HK25¢.¹²⁹⁴ In order to pre-empt probable protests from the insurance sector, the government held pre-legislation conferences with insurance industry representatives.¹²⁹⁵ The 1894 Ordinance was passed by the Legislative Council with no opposition, demonstrating that consultations with affected parties were useful in preventing unwanted clamour and to enhance acceptability of the tax law.

The study of the Hong Kong Stamp Ordinance 1921¹²⁹⁶ again points to the benefits of consultation in ensuring the passage of proposed legislation. Governor Sir Reginald Stubbs (in office 1919–1925) remarked in his letter to Winston Churchill, the Secretary of State for the Colonies, that: 'The 1921 Hong Kong Stamp Ordinance¹²⁹⁷ was drafted by Joseph Kemp, the Hong Kong Attorney General in consultation with a Committee on which principal Hong Kong business interests were represented.'¹²⁹⁸ It demonstrates that the Hong Kong government in 1921 made use of open discussion and consultation, in addition to Legislative Council debates, to ensure the Stamp Duty Bill became

¹²⁹⁴ Hong Kong Stamp Amendment Ordinance, No 13 of 1894, s 5; see section 3.3.5.

¹²⁹⁵ Letter from William Robinson to George Robinson (4 January 1895), CO129/266, 5.

¹²⁹⁶ No 8 of 1921.

¹²⁹⁷ No 8 of 1921.

¹²⁹⁸ Letter from Reginald Stubbs to Winston Churchill (23 June 1921), CO129/468, 180.

law without giving rise to serious public opposition and friction. The government accomplished its objective as there was no intense protest at all during the legislative stage. Kemp remarked: 'The provision of the Ordinance as ultimately passed excited little opposition'.¹²⁹⁹ Indeed there were also no revolts or public denunciations of the subsequent enforcement of the Hong Kong Stamp Ordinance 1921, a law which introduced significant increments to duty rates, coupled with more onerous collection mechanisms.¹³⁰⁰ The examination of the 1921 Stamp legislation enhances the understanding of how the colonial government pre-empted public protests and unofficial members' objections that were commonly associated with major revenue augmentation initiatives.

Regarding the second question as to the nature of those consulted, another key observation arising from analysing Stubbs' remark in the preceding paragraph is that, ironically, the Hong Kong government only consulted the business community and left the other sectors out of the discussions. Further, by examining the list of committee members, it can be concluded that all members were British business leaders and no Chinese merchants were appointed.¹³⁰¹ This reflected the prevailing political situation. The predominant position of the British businesses in the colonial structure had been maintained since the foundation of the colony. Tax Bills could be passed without severe consequences so long as the government obtained prior mutual understanding with major British business leaders in Hong Kong. It can be conjectured that these prominent British businessmen influenced the appointment of members of the Legislative Council and Executive Council, as nearly all Council members were also British businessmen. Furthermore, these British business leaders in Hong Kong maintained strong ties with Britain¹³⁰² and thus were able to make their opinions known to the British government, directly.

The circumstances also reflect the political reality that trade was of paramount importance to the colonial government and the administration took steps to avoid imposing excessive burdens on trade and thereby drive the British merchants away or provoke political resistance from the British commercial

¹²⁹⁹ Ibid 206.

¹³⁰⁰ See section 3.3.7.

¹³⁰¹ Per Lau Chu Pak, Hong Kong Hansard 30 April 1921, 57.

¹³⁰² P K Li, *Hong Kong from Britain to China Political Cleavages, Electoral Dynamics and Institutional Changes* (England, Ashgate Publishing Ltd 2000), 21.

community. Furthermore, the *Hong Kong Hansard* contains no evidence to suggest that the government and the Legislative Council unofficial members actively included the relief of poverty and community hardship in their stamp duty debates before World War II – they were only interested in trade and commerce.¹³⁰³

The Chinese unofficial member, Lau Chu Pak (in office 1913–1922) protested in the Legislative Council that:

The government has overlooked the interests of the Chinese merchants in not having appointed a single Chinese on the Committee to consider the Bill (stamp duty) before its introduction into this honourable Council. Seeing that they are the largest taxpayers in the Colony more than any other section of the general community I, and my Chinese colleague, submit Sir, that they have just ground for complaint.¹³⁰⁴

Stubbs expressed regret but did not provide any convincing reasons for the oversight.¹³⁰⁵ Studying the political circumstances, two factors are identified to support the colonial government's attitude towards the Chinese in respect of representation on tax matters granted to them. First the colonial government was free from mass electoral pressure. The Chinese would have no avenue to block the Stamp Duty Bill from becoming law even if they constituted the majority. Second, the Chinese had a submissive attitude. Lin Yu Tang, a famous Chinese scholar, observed in 1935 that:

There is so much of this virtue (of Confucian patience) that it has almost become a vice. The Chinese people have put up with more tyranny, anarchy and misrule than any Western people have put up with, and seem to have regarded them as the law of nature. In a certain part of Szechuan the people have been taxed thirty years in advance without showing more energetic protest than a half-audible curse in the privacy of household. Christian patience would seem like petulance compared to Chinese patience ... We submit to

¹³⁰³ Hong Kong Hansard 14 April 1921; Hong Kong Hansard 25 April 1921; Hong Kong Hansard 28 April 1921; Hong Kong Hansard 30 April 1921.

¹³⁰⁴ Hong Kong Hansard 30 April 1921, 57.

¹³⁰⁵ Ibid 58.

tyranny and extortion as small fish swim into the mouth of a big fish. Perhaps had our capacity for sufferance been smaller, our suffering would also be less.¹³⁰⁶

Besides having a submissive attitude, most of the Chinese came to the colony to escape the chaos in Mainland China, seeking a better living and greater economic opportunity. Although the evidence suggests that the colonial political system was far from perfect or just, it did maintain a relatively more stable environment with moderate policies that were badly needed by the Chinese as compared to Mainland China. With this in mind, the Chinese were not impelled to protest against colonial taxes and rules.

This clearly demonstrates the selected parties for frank open discussions were racially as well as occupationally biased. The hard truth was that the exclusion of the Chinese and the non-commercial class from discussions would not have affected the passing of the Stamp Ordinances, as these groups had no political recourse to protect their interests. This, in a way, prevented further complications and enabled expedition of the legislative process with fewer deliberations to handle. The government approach was successful.

It can be concluded that the ethos of the Hong Kong Stamp Ordinances favoured the opinions of British merchants, playing down the needs of the non-commercial class, and reinforced by showcase public consultations to neutralise political resistance. Nonetheless, based on the analysis of various Hong Kong Stamp Ordinances and, in particular the Hong Kong Stamp Ordinance 1921,¹³⁰⁷ it can be objectively stated that the government was always careful not to recommend any stamp duty policies that oppressed the Chinese and the non-commercial class in order to preclude the possibility of civic uproars.

Regarding the third question, it must be considered how such consultative meetings aiming to avert political opposition, shaped the stamp duty law. Attorney General Joseph Kemp (in office 1915–1930) had meetings with various bodies, individuals and members of the Legislative, as well as the

¹³⁰⁶ Yutang Lin, *My Country and My People* (New York, Day 1935), 44.

¹³⁰⁷ No 8 of 1921.

Executive, Councils, to seek their views on the proposed Hong Kong Stamp Ordinance 1921 after the first reading of the Stamp Duty Bill 1921. At the second reading of the Bill, Kemp informed the Legislative Council that the proposal for stamp duty on agreements for the sale of goods, contained in the original draft Bill, had been abandoned after further consultations held with diverse parties.¹³⁰⁸

The investigation regarding the rejection of agreements for sale of goods illustrates why they were not admissible for stamp duty. The agreements for the sale of goods were specifically exempted in 1866 during the introduction of stamp duty in Hong Kong.¹³⁰⁹ Kemp aimed to lift the exemption so that the government would have a larger stamp duty yield. Kemp remarked: 'The proposed duty does not appear to exist anywhere else.'¹³¹⁰ Indeed, he was fairly accurate if he had been referring to stamp duty law, as there was no British precedent to levy stamp duty on agreements for the sale of goods.¹³¹¹ Nevertheless, upon further deliberation, what Kemp had suggested was akin to levying a general excise duty¹³¹² on a wide variety of goods disguised in the form of stamp duty. The British Parliament first imposed the excise duty in Britain in 1643, to provide money for the parliamentary forces whilst engaged in the civil war against the Crown.¹³¹³ Thus, excise duty was certainly not a new idea in 1921.

Kemp aimed to introduce a stamp duty on agreements for the sale of goods (in substance, excise duty) in order to replace the revenue loss upon relinquishing stamp duty on probates (in substance, estate duty). After his meetings with various bodies in Hong Kong, he understood his proposal aroused a 'considerable amount of opposition'¹³¹⁴ and had to be shelved. Historically the British government could never obtain the consent of the Parliament for a

¹³⁰⁸ Letter from Reginald Stubbs to Winston Churchill (23 June 1921), CO129/468, 206.

¹³⁰⁹ See section 2.3.3.

¹³¹⁰ Letter from Reginald Stubbs to Winston Churchill (23 June 1921), CO129/468, 206.

¹³¹¹ British Stamp Act 1891 (54 & 55 Vict c 39), sch.

¹³¹² Excise duties were duties paid when purchases were made on goods.

¹³¹³ Basil Sabine, *A Short History of Taxation* (London, Butterworths 1980), 90–91; The National Archives, 'A Brief History of HM Customs and Excise'.

<<http://webarchive.nationalarchives.gov.uk/+http://www.hmrc.gov.uk/history/hmce.htm>> assessed 22 January 2015.

¹³¹⁴ Letter from Reginald Stubbs to Winston Churchill (23 June 1921), CO129/468, 206.

general excise, and this state of affairs continued into the twentieth century.¹³¹⁵ A principal concern had been to avoid the economic drag that was destructive of the Netherlands economy in the seventeenth century caused by rampant excise duties.¹³¹⁶ An eighteenth century British economic agent in The Hague (the capital city of the province of South Netherlands today) wrote to London about Dutch taxes: 'I have reckoned a man cannot eate a dishe of meate in an inn but that one way or another he shall pay 19 excises out of it. This is not more strange than true.'¹³¹⁷ High internal prices in the Netherlands caused by a general excise depressed trade and commerce and forced the Netherlands into an economic decline in the eighteenth century.¹³¹⁸

From the findings, it can be concluded that it was essential for the British Stamp Acts to include an exemption with regard to agreements for sale of goods to prevent the undesirable effect of driving the prices of certain commodities to very high levels. As such, it was reasonable for the various parties to object to Kemp's proposal in Hong Kong. The evidence thus shows that the government took advice from the consultative meetings and that the system of consultation shaped the evolution of specific Hong Kong stamp duty provisions. There is other post 1921 evidence such as the consultation processes leading to the promulgation of stamp duty counter noncompliance rule on blank transfers¹³¹⁹ as well as the rule to determine locality of share transactions¹³²⁰ to demonstrate that consultation processes did affect how the Hong Kong Stamp Ordinances were written.

The fourth question deals with the improvement made to the consultation system and how such improvement was made possible. The Hong Kong Stamp Amendment Ordinance 1968¹³²¹ amended the Hong Kong Stamp Ordinance 1921¹³²² in many respects and the Commissioner of Inland Revenue described

¹³¹⁵ Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilization* (2nd edn, Lanham, Maryland, Madison Books 1999), 261.

¹³¹⁶ Ibid 267.

¹³¹⁷ Charles Wilson, *The Dutch Republic and the Civilization of the Seventeenth Century* (New York, McGraw-Hill 1968), 232.

¹³¹⁸ Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilization* (2nd edn, Lanham, Maryland, Madison Books 1999), 268.

¹³¹⁹ See section 4.2.4.

¹³²⁰ See section 4.2.3.

¹³²¹ No 30 of 1968.

¹³²² Hong Kong Stamp Ordinance, No 8 of 1921.

the stamp duty reform as ‘a result of the culmination of some ten years’ research and deliberation’.¹³²³ This can be contrasted with previous consultations that usually took no longer than a year, even for the 1921 major stamp duty reform.¹³²⁴ The 1968 reform was the result of the first long consultation conducted for Hong Kong stamp duty.

It took a decade because the Hong Kong government consulted widely, to ensure any substantial changes took into account the needs of commercial practice as well as of public revenue.¹³²⁵ It demonstrates that even though the Hong Kong government was free from electoral pressure, it still embarked on a self-imposed and lengthy public consultation with various pressure groups to foster trust and support for its tax policies. The long consultation process initiated in the 1960s was one of the factors that contributed to the acceptability of the controversial provisions devised under the 1968 stamp duty amendments to maintain system sustainability.¹³²⁶

As an illustration, the 1968 reform introduced into the stamp duty system many contentious anti-avoidance policies such as rendering lawyers, accountants and other professionals acting on unstamped documents to be liable for the unpaid duties,¹³²⁷ as well as the complicated rules to prevent evasion of duty chargeable on leases of property.¹³²⁸ These proposed changes engendered no debate in the legislative process as apparently the Financial Secretary had already ironed out the differences with the affected parties and considered the issues thoroughly before submitting the law to the Legislative Council.¹³²⁹ The evidence also shows that stamp duty law promulgated as a consequence of such long consultation was successfully engineered for long-term political acceptance. Indeed, the modern stamp duty legislation¹³³⁰ retained many elements introduced under the 1968 stamp duty legislation.¹³³¹

¹³²³ Hong Kong Commissioner of Inland Revenue, ‘Hong Kong Annual Departmental Report by the Commissioner of Inland Revenue for the Financial Year 1968–69’ (Hong Kong, Government Printer 1969), 19.

¹³²⁴ Hong Kong Hansard 14 April 1921, 37.

¹³²⁵ Per John Cowperthwaite, Hong Kong Hansard 26 June 1968, 93.

¹³²⁶ See section 4.2 for the meaning of sustainability.

¹³²⁷ Hong Kong Hansard 26 June 1968, 302.

¹³²⁸ Hong Kong Hansard 26 June 1968, 305.

¹³²⁹ Hong Kong Hansard 24 July 1968, 345.

¹³³⁰ Hong Kong Stamp Ordinance, c 117 (Originally No 31 of 1981).

¹³³¹ Examples are:

Long consultation on tax policies was possible under the Hong Kong political umbrella, as the danger associated with party switching, relating to the alignment of views between incoming and the outgoing parties, was non-existent. Indeed, there is no record that any Governors and senior civil servants had conflicts with the previous appointees. It was simply not necessary for them to hold conflicting views in order to gain office. They just needed to perform their jobs well in order to be promoted by the Colonial Office or given recognition in the form of a knighthood.

The possibility of engaging in long consultations certainly also discouraged the government from adopting a policy of doing nothing on tax matters in order to avoid trouble. Undoubtedly, the political environment assisted in fostering a constructive evolution of the stamp duty that succeeded as an important source of revenue for the government until today.

The body of evidence shows conclusively that genuine consultations were usually motivated by the government's need to insulate political resistance in respect of stamp duty amendments designed for revenue raising or to maintain system sustainability. The analysis demonstrates clearly that although Hong Kong had limited taxation with representation in the Legislative Council under British rule, as the official members were always the majority till the 1970s,¹³³² the government made up for the deficiency by utilising frank open discussions with selected parties. The analysis shows that the use of consultations to achieve the end, in turn, had moulded the stamp duty system.

Successive Hong Kong governments respected the system of consultation as a fundamental culture to adhere to in designing any Stamp Duty Bills. This entrenched tradition was overtly acknowledged by Hong Kong Financial

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1. Hong Kong Stamp Amendment Ordinance, No 30 of 1968, s 16. The ground-breaking rule that stamp duty was payable only in respect of shares, the transfer of which was required to be registered in Hong Kong. See section 4.2.3.
 2. Hong Kong Stamp Amendment Ordinance, No 30 of 1968, s 21. The rule that prosecution had to be brought within two years from the discovery of the offence by the Collector of Stamp Duty or within six years from the date of the commission of the offence whichever is earlier. See section 4.2.5.

¹³³² Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China, 'History of the Legislature' <www.legco.gov.hk/general/english/intro/hist_lc.htm> accessed 20 September 2016.

Secretary Philip Haddon-Cave (in office 1971–1981) when he referred to ‘the consultative system which is, I agree, such an integral part of the decision-making process here in Hong Kong’, when he was debating the 1981 Hong Kong Stamp legislation.¹³³³ The Hong Kong government respected this tradition and seldom deviated from the established principle. It can also be said that such ideology was retained in the current Hong Kong functional constituency system¹³³⁴ implemented six years before the resumption of Chinese sovereignty.

4.3.8 British stamp duty law as precedent to gain acceptance

Through the examination of Hong Kong stamp duty history from 1866 to 1997, it is seen that the Hong Kong government adopted numerous British stamp duty laws in its stamp duty reforms or amendments. Perhaps superficially, this was due to pragmatic considerations, namely that the practical British stamp duty provisions had stood the test of time and were unlikely to give rise to undesirable effects. Close analysis of the historical records reveals that another political consideration may have been responsible for the frequent adoption of British stamp duty provisions into the Hong Kong stamp duty system, namely the need to obtain political approval of stamp duty legislative amendments by the Colonial Office as well as the Hong Kong Legislative Council unofficial members.

It has been seen that the introduction of the 1901 Hong Kong Stamp Ordinance¹³³⁵ was a stamp duty amendment to implement an anti-evasion mechanism for probates.¹³³⁶ This measure was founded upon British legislation to thwart the same device by which probate duty might be evaded. Upon examination, the relevant contemporaneous British legislation was the British

¹³³³ Hong Kong Hansard 27 May 1981, 909.

¹³³⁴ Yasli Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law* (2nd edn, Hong Kong, Hong Kong University Press 1999), 233–34. A functional constituency is a professional or special interest group involved in the electoral process. Eligible voters in a functional constituency include natural persons of those professions or interest groups as well as other designated legal entities such as organisations and corporations. Examples of functional constituencies today are legal, medical, and accountancy, commercial, industrial and so on.

¹³³⁵ No 22 of 1901.

¹³³⁶ See section 4.2.4.

Customs and Inland Revenue Act 1881¹³³⁷ that had exactly the same wording as that adopted by Hong Kong in 1901.

Through the analysis of the *Hong Kong Hansard*, it is postulated that this encouraged acceptance by the unofficial members of the Legislative Council because they were less sceptical about law taken from Britain and indeed they did not question the new law.¹³³⁸ In addition, the approach also ensured that the new Hong Kong provisions attracted the least possible scrutiny by the Colonial Office. The Colonial Office sanctioned the law speedily, praising the Hong Kong Attorney General for having done a good job.¹³³⁹

In addition, the 1901 Hong Kong Stamp Ordinance¹³⁴⁰ also set the probate tax rates on a higher scale than those contained in the 1894 Hong Kong Stamp Amendment Ordinance.¹³⁴¹ The unofficial members agreed, as the Acting Attorney General Henry Pollock (in office 1896–1901) gave evidence that the duties before the augmentation were still very low as compared to those in Britain.¹³⁴² This confirmed that Hong Kong colonial officials often made references to the practices in Britain so as to increase the legitimacy of the tax law they promulgated in the colony and to attain political acceptance by reducing the possibility of critical intervention by the Colonial Office and the objections of Legislative Councillors as well as the general public.

In a contrary circumstance in 1921, there was a clear instance where the Hong Kong government introduced stamp duty law that had no precedent in Britain. It will be recalled that Attorney General Joseph Kemp (in office 1915–1930) altered the fundamental British stamp duty principles for stamp duty mechanisms and applied them in Hong Kong via the 1921 Hong Kong Stamp Ordinance.¹³⁴³ This was the first time that the Hong Kong government introduced new stamp duty mechanism rules that had no precedent in Britain, or anywhere else. The evidence shows that Kemp, being a reformist with

¹³³⁷ 44 & 45, Vict c 12, s 38(2).

¹³³⁸ Hong Kong Hansard 29 July 1901, 39.

¹³³⁹ Minutes on Hong Kong Stamp Ordinance, No 22 of 1901 (4 December 1901), CO129/307, 484.

¹³⁴⁰ No 22 of 1901.

¹³⁴¹ No 13 of 1894. See section 3.3.5.

¹³⁴² Hong Kong Hansard 29 July 1901, 39.

¹³⁴³ No 8 of 1921; see section 3.3.7.

imagination and with a willingness to take risks, was not approved of by the officials in the British Inland Revenue, who wrote to the Colonial Office to register their vehement disapproval of Kemp's proposal. Kemp was fortunate in having Winston Churchill heading the Colonial Office during the promulgation of the 1921 Hong Kong Stamp Ordinance. Displaying British pragmatism and a willingness to deviate from established traditions, Churchill sanctioned all Kemp's stamp duty innovations despite the British Inland Revenue's severe criticisms.¹³⁴⁴ Without Churchill's support, the British government would have annulled Kemp's reform.

The evidence demonstrates that adhering to British stamp duty law was a certain way to guarantee political approval locally as well as from the Colonial Office. Deviation from British rules would ordinarily attract political disapproval. The imperative to gain political approval by trying to adopt British stamp duty legislation has been a formative factor in the development of the Hong Kong stamp duty system under the British rule.

4.3.9 Political changes to encourage stamp duty innovation

It has been seen how the political imperative to obtain consent from the British merchants in Hong Kong, the Hong Kong Legislative Council unofficial members and the British Colonial Office, influenced the development of Hong Kong stamp duty law. It must now be seen whether stamp duty law was moulded by the total relinquishment of the British government's control over the stamp duty legislative process in Hong Kong after World War II. In other words, did the removal of such a key political imperative influence the development of the Hong Kong stamp duty regime?

Immediately after World War II a fundamental change was made to the political system. Both the Colonial Office and the British Treasury were moving away from the concept of detailed control of a colony's finances. Reflecting on why Britain lost its colonies to the Japanese, the British government concluded that the considerable correspondence between the Governors, the Colonial Office

¹³⁴⁴ Letter from British Inland Revenue to Under Secretary of State of the Colonial Office (22 October 1921), CO129/472, 665–69; Minutes on Operation of Hong Kong Stamp Ordinance No 8 of 1921 (22 October 1921), CO129/472, 670; Letter from Winston Churchill to Reginald Stubbs (12 March 1922), CO129/474, 40.

and the British Treasury before the war was counter-productive.¹³⁴⁵ It was resolved that the Governors would be able to make decisions with the benefit of the colonies in mind and in the absence of the tedious controls exercised by the Colonial Office and the British Treasury.¹³⁴⁶ More specifically for Hong Kong, it was formalised that from 1 April 1948 full financial control from Britain would cease.¹³⁴⁷ The necessity for the Colonial Office's sanction was retained for annual estimates, expenditures and loans.¹³⁴⁸ In 1958, Hong Kong was granted even greater financial autonomy. It was no longer required to submit annual estimates and expenditures to the Secretary of State for the Colonies for approval.¹³⁴⁹ It meant that all determining power on financial matters including taxation was transferred to the Hong Kong Legislative Council. The composition of the Legislative Council changed rapidly with more appointments of unofficial members. The colonial government introduced elected Legislative Council members in 1985. Eventually, all members were elected in 1995 and the system was retained after the change of sovereignty in 1997.¹³⁵⁰

Based on the evidence collected, it can be observed that the pursuit of sustainability for the British colonial governing system (in which the revenue system was a subset), following the British government's reflection on its war failures with the Japanese, led to the modification of the political process. In this connection, research into a group of post-World War II Hong Kong Stamp Ordinances demonstrates that this major alteration to the political process had influenced the drafting of the law.

The Hong Kong Stamp Amendment Ordinance 1946¹³⁵¹ which introduced stamp duty on capital gains exemplifies the forces at play that enabled the implementation of stamp duty on capital gains in Hong Kong at a time when even the British government was yet to impose a capital gains tax in Britain.

¹³⁴⁵ Gavin Ure, *Governors, Politics, and the Colonial Office: Public Policy in Hong Kong, 1918-58* (Hong Kong, Hong Kong University Press 2012), 106.

¹³⁴⁶ *Ibid.* See generally CO 323/1895/2 for discussion on treasury control policy in the British colonies immediately after the World War II.

¹³⁴⁷ Hong Kong Hansard 6 October 1948, 280.

¹³⁴⁸ *Ibid.*

¹³⁴⁹ Hong Kong Hansard 6 March 1958, 46.

¹³⁵⁰ Norman Miners, *The Government and Politics of Hong Kong* (5th edn, Hong Kong, Oxford University Press 1995), 116; G B Endacott, *Government and People in Hong Kong, 1841-1962: A Constitutional History* (Hong Kong, Hong Kong University Press 1964), 248.

¹³⁵¹ Hong Kong Stamp Amendment Ordinance, No 22 of 1946; see section 3.3.9.

More remarkably, the idea of levying stamp duty on capital gains was totally novel in the British revenue system.¹³⁵²

All revenue legislation passed in the Legislative Council during the pre-World War II era was subject to the approval of the Colonial Office and British Treasury. The evidence demonstrates that these British authorities frequently commented on or even criticised proposed stamp legislation and influenced the Governors to make amendments. In one instance, the Colonial Office banned, in totality, the stamp duty regulation promulgated locally.¹³⁵³ It has also been seen that the basis of their decisions was usually derived from a comparison of the Hong Kong stamp duty law with prevailing practices in Britain. Thus, it can be speculated that the British authorities would probably have forbidden the implementation of a stamp duty on capital gains, as it might not be accepted that Hong Kong embark on the implementation of revenue law in which Britain had no prior experience. Furthermore, capital gains tax was still subject to debate within the British government at that time without any practical outcome.¹³⁵⁴ The key problems stressed by the British government were the immense administrative problems and taxpayers' formidable resentment.¹³⁵⁵ Although Hong Kong had offered solutions to ease the British government's concerns by imposing capital gains tax via the stamp duty system, it would still be politically risky if the Colonial Office were to sanction such legislation, as after all, the Secretary of State for the Colonies was a political cabinet minister appointment answerable to the British Parliament.

In essence, it can be deduced that the main factor driving the actual implementation of the innovative Hong Kong Stamp Amendment Ordinance 1946¹³⁵⁶ was that after World War II the Governor was not obliged to submit the stamp duty legislation to the Colonial Office and the British Treasury for approval. A survey of the index of the correspondence between the Colonial

¹³⁵² Britain introduced a tax on short-term or speculative capital gains in 1960s. The British government first imposed capital gains in Britain in 1965, see Martin Daunton, *Just Taxes: The Politics of Taxation in Britain, 1914-1979* (Cambridge, Cambridge University Press 2002), 215.

¹³⁵³ See section 2.3.6.

¹³⁵⁴ Martin Daunton, *Just Taxes: The Politics of Taxation in Britain, 1914-1979* (Cambridge, Cambridge University Press 2002), 213.

¹³⁵⁵ Ibid 215.

¹³⁵⁶ No 22 of 1946.

Office and the Hong Kong Governors during 1946¹³⁵⁷ confirms the British government adhered to the new tenet. The number of letters decreased significantly as compared to the pre-war period and there was absolutely no communication in relation to the passing of the 1946 stamp legislation.¹³⁵⁸ It can also be reasoned that Hong Kong Governors were pivotal in approving any stamp duty policies from 1946 onwards.

When the Stamp Duty Amendment Bill 1946 was submitted to the Hong Kong Legislative Council, there was no opposition to the tax at all.¹³⁵⁹ It could be that the term 'excess stamp duty'¹³⁶⁰ used to classify the new tax as imposed under the prevailing stamp duty system was easier to accept politically than the more revealing terms 'new capital gains tax' or 'new income tax'¹³⁶¹ that would invite widespread resistance. Nonetheless, the analysis of the reasons behind the smooth enactment of the 1946 stamp legislation reveals two subtle political advancements to pre-empt opposition. These were made to compensate for the absence of additional legitimacy previously conveyed by the Colonial Office's sanction on stamp duty policies.

First, the tax was proposed by the 1946 Taxation Committee appointed by the Governor.¹³⁶² Two Taxation Committees had been formed in the colony before 1946 to recommend stamp duty related changes.¹³⁶³ The difference between these two Committees and the 1946 Committee was that in order to add greater legitimacy to the recommendations promulgated, besides appointing members of the same affluent sector of the British community as had its predecessors, three prominent Chinese were appointed out of six non-government office-

¹³⁵⁷ Great Britain Colonial Office, *Hong Kong: Original Correspondence (CO129): Contents, 1943-1951* (London, Public Record Office); Great Britain Colonial Office, *Hong Kong and Pacific Department: Original Correspondence (CO1023): Contents, 1946-1955* (London, Public Record Office); Great Britain Colonial Office, *Far Eastern Department and Successors: Registered Files (CO1030): Contents, 1941-1967* (London, Public Record Office).

¹³⁵⁸ Ibid.

¹³⁵⁹ Hong Kong Hansard 3 October 1946; Hong Kong Hansard 11 October 1946; Hong Kong Hansard 17 October 1946.

¹³⁶⁰ See section 3.3.9.

¹³⁶¹ The Hong Kong government's attempt to establish income tax began in 1946. The unofficial members of the Legislative Council were initially opposed to the establishment of a peacetime income tax system in Hong Kong. See Michael Littlewood, *Taxation without Representation: The History of Hong Kong's Troublingly Successful Tax System* (Hong Kong, Hong Kong University Press 2010), 72–73.

¹³⁶² Hong Kong Hansard 17 October 1946, 168.

¹³⁶³ Draft Report of The Taxation Committee of 1946 (Undated), CO129/593/3,106.

bearer members. In order to represent the interests of the community at large, the Governor invited Ronald Hall,¹³⁶⁴ the colony's Anglican Bishop to be a member.¹³⁶⁵ The 1946 Taxation Committee, for the first time in the revenue history of Hong Kong, also invited the general public to make representations.¹³⁶⁶

Second, the Governor made use of the Select Committee to pre-empt heated debates. When the recommendations in the form of a Bill reached the Legislative Council, the Governor immediately referred the Bill to a Select Committee comprising the Attorney General, the Financial Secretary, David Landale and Lo Man Kam (both unofficial members), to resolve the public criticisms of the method proposed to derive the taxable gain.¹³⁶⁷ As a result, no debates were recorded in the whole legislative process.¹³⁶⁸

It will be recalled that the stamp duty on capital gains tax was not sustainable; it was only in operation for two years before it was repealed.¹³⁶⁹ The main reason given by the Hong Kong government was that the formula used to derive the capital gain was complex and problematic to administer in practice.¹³⁷⁰ From the standpoint of the political process, this failure was attributed to the review processes being inadequate due to considerations of political expediency. Although not articulated during the legislative process, the unofficial members might have had a prior understanding that the tax was a temporary measure that warranted no vigorous disagreement. The evidence to support this reasoning was found in the 1946 Taxation Committee's report. It states that: 'A tax of this nature, dependent on increasing property values, is not a reliable measure for permanent inclusion in a system of taxation.'¹³⁷¹ As such, the unofficial members did not inject effort and time to perfect the Ordinance. The unofficial members understood the post-war social and economic

¹³⁶⁴ See generally David M Paton, *R O: The Life and Times of Bishop Ronald Hall of Hong Kong* (Gloucester, Diocese of Hong Kong and Macao and Hong Kong Diocesan Association 1985). Ronald Hall was described as a figure with a burning compassion for the less privileged. He emphasized the needs of ordinary people, especially victims of social upheaval.

¹³⁶⁵ Draft Report of The Taxation Committee of 1946 (Undated), CO129/593/3,106.

¹³⁶⁶ Ibid. Eight representations were eventually received.

¹³⁶⁷ Hong Kong Hansard 11 October 1946, 166; Hong Kong Hansard 17 October 1946, 168.

¹³⁶⁸ Hong Kong Hansard 3 October 1946; Hong Kong Hansard 11 October 1946; Hong Kong Hansard 17 October 1946.

¹³⁶⁹ See section 3.3.9.

¹³⁷⁰ Hong Kong Hansard 25 August 1948, 245.

¹³⁷¹ Draft Report of The Taxation Committee of 1946 (Undated), CO129/593/3,107.

consequences that rendered the government desperately in need of funds to perform rehabilitation works and to solve social problems. These did not allow the comfort of a prolonged legislative review of the novel stamp duty.¹³⁷² It appears in the *Hong Kong Hansard* that David Landale and Lo Man Kam focused on how to improve the Bill quickly to a satisfactory standard rather than formulating opposing arguments to facilitate fruitful debates.¹³⁷³

Another factor that caused the failure of the 1946 stamp duty amendment was, ironically, attributable to the relinquishing of Hong Kong financial control by the British government after World War II. With this, the Hong Kong government also avoided asking for the British government's advice so as not to invite unwelcome objections to its financial policies. The evidence reveals that the lack of support and practical recommendations from the British revenue experts eroded the sustainability of the stamp duty legislation introduced.

However, in the longer term, the British government's decision to relinquish complete control over Hong Kong's financial affairs did more good than harm to the colony's stamp duty system. Hong Kong was able to pursue its own stamp duty policies freely without any hindrance from the British government. As an illustration, the Hong Kong government was able to embark on bold Stamp Amendment Ordinances to repeal a substantial number of chargeable instruments in 1977 and 1978 to suit the local conditions, without any interference from the British government.¹³⁷⁴

4.3.10 The relative importance of political imperatives in directing Hong Kong stamp duty development

The political imperative in this study has been considered of less importance than the demand for sustainability in shaping the Hong Kong stamp duty system, for two reasons.

¹³⁷² Hong Kong Hansard 25 July 1946.

¹³⁷³ Hong Kong Hansard 17 October 1946, 168–69.

¹³⁷⁴ See section 3.5.3; Hong Kong Stamp Amendment Ordinance, No 34 of 1977; Hong Kong Stamp Amendment Ordinance [No 2], No 51 of 1977; Hong Kong Stamp Amendment Ordinance, No 22 of 1978; Hong Kong Stamp Amendment Ordinance [No 2], No 23 of 1978; Hong Kong Stamp Amendment Ordinance [No 3], No 24 of 1978.

First, the evidence reveals that a demand to raise revenue, or a need to enhance the stamp system sustainability, would normally lead to political opposition to the related stamp duty proposal. In sequence, the elements of the Hong Kong Stamp Ordinances were influenced by the resulting political methods engaged in by the government to circumvent opposition. Another way to present the relationship is to visualise it as a two-way process. The need for stamp duty law to enhance revenue and preserve the system drove the political process development. Conversely, the utilisation of political methods to surmount political resistance shaped the stamp duty law and implementation process. Indeed, the discussion establishes there were many instances where the stamp duty system was significantly influenced by political demands and some of the laws introduced have been sustained to the present day. Nonetheless, it is not valid to position political demand as a more powerful imperative than the demand for revenue or sustainability. The reason for introducing the many stamp provisions to overcome political pressure was related in the first instance to enhancing revenue and/or improving stamp system sustainability. In other words, the political imperatives which moulded the stamp duty law were first induced by the need to raise revenue and/or to maintain system sustainability.

Second, the study did not detect any significant incident arising from introducing or amending a Hong Kong Stamp Ordinance that was initiated on purely political grounds. In this regard, the closest incident that could be distinguished in that manner was the political pressure exerted (1974) by the local commercial communities to reduce stamp duty rates, which the Governor rejected.¹³⁷⁵

However, political imperative was considered higher than the pragmatic imperative discussed below, based on the frequency of related stamp duty measures enacted, the impact of the law created as well as the sustainability of the rules.¹³⁷⁶

4.4 Pragmatic imperatives

The appraisal of Hong Kong stamp duty history indicates that there was yet another kind of imperative that shaped the Hong Kong stamp duty legislation,

¹³⁷⁵ See section 4.2.8.

¹³⁷⁶ See section 4.4.

one unrelated to the need to raise revenue, or to promote social policies or to enhance economic growth. This was the pragmatic imperative.

The characteristics of a number of seemingly unimportant stamp duty amendments can be analysed to ascertain their underlying purpose; that is, whether they were attempts to fulfil a specific regulatory objective of instituting fiscal accountability or to promote certain non-fiscal internal control policies, or to achieve both aims. It must also be seen whether such stamp duty measures were successful.

4.4.1 Stamp duty as a tool to institute fiscal accountability

Governor Sir Arthur Kennedy (in office 1872–1877) did not implement any new policies and was content with the practical task of administering the colony after succeeding Governor Sir Richard MacDonnell (in office 1866–1872).¹³⁷⁷ Kennedy did not instigate any stamp duty law to enhance revenue or equity; instead he made use of the stamp duty system to improve the practical management of the colony.

During Kennedy's tenure, a stamp duty was imposed on emigration officers' certificates. By virtue of the Hong Kong Ordinance to Impose Stamp Duties on Emigration Certificates 1872,¹³⁷⁸ the fees imposed by the Hong Kong Chinese Passengers Ordinance 1871¹³⁷⁹ were converted to stamp duties,¹³⁸⁰ which were added to the schedule of the Hong Kong Stamp Duty Amendment Ordinance 1868.¹³⁸¹

¹³⁷⁷ See Geoffrey Robley Sayer, *Hong Kong, 1862–1919: Years of Discretion* (Hong Kong, Hong Kong University Press 1975), 32–39. Sir Arthur Kennedy had a balanced and non-confrontational approach, and administered Hong Kong with unerring judgement and common sense and was the first Governor to invite the Chinese to functions at the Government House. Both the Chinese and British regretted his departure in March 1877. On the news of his death in 1883, a Hong Kong public meeting decided to erect a statue in the Hong Kong Botanical Garden in his memory; he was the only Governor of Hong Kong to be so honoured; G B Endacott, *A History of Hong Kong* (London, Oxford University Press 1958), 160.

¹³⁷⁸ An Ordinance to impose stamp duties in lieu of the fees payable to emigration officer of Hong Kong, No 13 of 1872.

¹³⁷⁹ An Ordinance to modify the regulations of the “Chinese Passenger Act, 1855”, No 8 of 1871.

¹³⁸⁰ An Ordinance to impose stamp duties in lieu of the fees payable to emigration officer of Hong Kong, No 13 of 1872, s i.

¹³⁸¹ *Ibid* s iii.

To determine the rationale for this amendment in the law, it is necessary to investigate the events leading to it. With the beginning of the California Gold Rush in 1848, a demand for unskilled labour rapidly developed. Numerous Chinese coolies were prepared to undertake the long voyage for the sake of higher wages. The coolie trade was organised by labour contractors who engaged the coolies and delivered them to ports to be housed in barracoons to await transport. The conditions on board the ships in the coolie trade were deplorable, leading to high rates of mortality.¹³⁸²

The British Parliament aimed to prevent the abuse of Chinese emigrants conveyed from British ports in China by enacting the Chinese Passenger Act 1855.¹³⁸³ Under this Act, the British government imposed regulations on ships departing from British ports in China with Chinese passengers. For example, the Act specified the mandatory space to be allocated to each passenger, the diet for the passengers, the total amount of medical supplies to be carried on board ships, and many other regulations. The ship operators had to satisfy these regulations before an emigration officer's certificate could be issued, authorising the ship to leave British ports in China.¹³⁸⁴ The Act also authorised the Hong Kong government to enact Ordinances modifying the regulations of the Act.¹³⁸⁵ In 1871, the Hong Kong government enacted the Hong Kong Chinese Passengers Ordinance, requiring the owners or charterers of ships to pay HK\$25 when applying for an emigration officer's certificate. Another HK\$25 was payable when the emigration officer granted the certificate.¹³⁸⁶

It was unclear whether the Hong Kong Treasury or the Hong Kong Emigration Office had title to the fees. The lack of clarity arose because the authority to collect the fees originated in the Chinese Passenger Act 1855, an Act of the British Parliament, rather than an Ordinance passed by the Hong Kong government.

¹³⁸² Frank Welsh, *A History of Hong Kong* (London, Harper Collins 1997), 218.

¹³⁸³ 18 & 19 Vict c 104.

¹³⁸⁴ Chinese Passenger Act 1855 (18 & 19 Vict c 104), sch A, B & C.

¹³⁸⁵ *Ibid* s 2.

¹³⁸⁶ An Ordinance to impose stamp duties in lieu of the fees payable to emigration officer of Hong Kong, No 13 of 1872, s 11.

The correspondence between Kennedy and the Secretary of State for the Colonies, Lord Wodehouse, confirmed that the emigration officer was retaining the fee for his own use.¹³⁸⁷ The amount was substantial because the emigration officer had cleared seventy-three ships in ten months in 1872.¹³⁸⁸ This was unacceptable to the Colonial Office.

The Secretary of State instructed Kennedy to rectify the situation by preparing the Hong Kong Ordinance to Impose Stamp Duties on Emigration Certificates 1872¹³⁸⁹ to annul the fee payable to the Hong Kong emigration officer under the Chinese Passengers Ordinance 1871.¹³⁹⁰ This would ensure that a Hong Kong stamp duty would be levied on certificates issued to Chinese passenger ships.

The emigration certificates had to be presented to the Stamp Office for stamping, which made it impossible for the emigration officer to retain the fees. This measure was successful; the emigration officer wrote to the Hong Kong government, explaining that he would comply and, in addition, refund the fees he had thus far retained.¹³⁹¹ Nevertheless, in the same letter, he requested that the government increase his remuneration.¹³⁹²

The objective of the stamp duty amendment was, therefore, the practical one of restoring fiscal control and accountability. The amendment was influenced by the development of fiscal policy in Britain in the nineteenth century. The Select Committee on Public Monies of 1857 in Britain suggested that governmental revenues be unified and treated as a single pool of money regardless of how they were raised. The British Parliament formalised the recommendation by passing the Exchequer and Audit Department Act 1866.¹³⁹³ The entire revenue collected by Britain from all sources was paid to the Exchequer. Thus, the gross revenue collected by the Commissioner of Customs, the Commissioner of

¹³⁸⁷ Letter from Arthur Kennedy to John Wodehouse (17 January 1873), CO129/162, 11.

¹³⁸⁸ Comments given by senior officials in the Colonial Office in response to the Letter from Arthur Kennedy to John Wodehouse (17 January 1873), CO129/162, 10.

¹³⁸⁹ An Ordinance to impose stamp duties in lieu of the fees payable to emigration officer of Hong Kong, No 13 of 1872.

¹³⁹⁰ The Secretary of State for the Colonies issued the instruction on 2 September 1872. See Letter from Arthur Kennedy to John Wodehouse (17 January 1873), CO129/162, 11.

¹³⁹¹ Letter from Henry Thomsett to Cecil Smith (4 January 1874), CO129/162, 14.

¹³⁹² Ibid 15.

¹³⁹³ 29 & 30 Vict c 39; see Martin Daunton, *Trusting Leviathan: The Politics of Taxation in Britain, 1799–1914* (Cambridge University Press 2001), 66–67.

Inland Revenue, and the Postmaster General, rather than the net revenue arising, was paid to the Exchequer.¹³⁹⁴ Government departments were not allowed to retain any income to defray their own operating costs. The danger in allowing the departments to retain revenue was that they had every incentive to use it for their own ends and only pay the smallest possible amount over to the Exchequer. The Exchequer and Audit Department Act also required that the costs of operating these public services be voted on and approved by Parliament.¹³⁹⁵ These were the main principles of Gladstone's British finance reform in the nineteenth century.¹³⁹⁶

The correspondence between the Secretary of State for the Colonies and Kennedy shows conclusively that the Colonial Office was eager to enforce a similar ideology in Hong Kong.¹³⁹⁷ The Colonial Office asserted that the British principle forbidding any department from retaining fees for its own use should be followed strictly. A stamp duty was chosen by the Colonial Office and the Governor as a tool to reinforce fiscal control over revenues raised by application to Chinese passenger ships in the late nineteenth century. It was, therefore, a clear use of the stamp duty to achieve a wider policy outcome.

There is no evidence to suggest that the onerous stamp duty was intended to affect behaviour or suppress the immoral trade of exploiting unskilled Chinese labourers. The Hong Kong government might have had this objective in mind, but it was not articulated. Even if the intention to suppress immoral activities was contemplated, the perceived well-meaning gesture did not last long; in 1874, the stamp duty was decreased to HK\$1 on the application for a certificate and another HK\$1 on receiving the certificate.¹³⁹⁸ No official explanation was given, but this might be explained by the Hong Kong government's intention to avoid driving the coolie trade away from Hong Kong to other ports in China.¹³⁹⁹

¹³⁹⁴ Exchequer and Audit Department Act 1866 (29 & 30 Vict c 39), s 10.

¹³⁹⁵ Ibid s 14.

¹³⁹⁶ Martin Daunton, *Trusting Leviathan: The Politics of Taxation in Britain, 1799–1914* (Cambridge University Press 2001), 67.

¹³⁹⁷ Letter from Arthur Kennedy to John Wodehouse (17 January 1873), CO129/162, 11.

¹³⁹⁸ An Ordinance to consolidate and amend law relating to Chinese passenger ships, and the conveyance of Chinese emigrants, No 3 of 1874, sch E, s 9.

¹³⁹⁹ For an account of the coolie trade and its impacts, see W K Chan, *The Making of Hong Kong Society* (Oxford, Clarendon Press 1991), c 5; Geoffrey Robley Sayer, *Hong Kong, 1862–1919: Years of Discretion* (Hong Kong, Hong Kong University Press 1975), 36.

4.4.2 Stamp duty as an internal control device

Kennedy also imposed a stamp duty on Supreme Court vouchers for sheriffs' services. Historical research reveals that this was an explicit example of the stamp duty system being used as a fee-collection mechanism

The duties of sheriffs were to execute writs, summons, and other processes of the Hong Kong Supreme Court¹⁴⁰⁰ collecting fees for various services rendered.¹⁴⁰¹ The introduction of the Hong Kong Sheriff's Ordinance 1873,¹⁴⁰² meant that sheriffs were not allowed to collect fees directly; and so stamp duties were imposed instead.¹⁴⁰³ The law required that Supreme Court vouchers be prepared, indicating the services required. These vouchers were to be presented to the Stamp Office for stamping. The sheriffs could act only on vouchers bearing an appropriate stamp.¹⁴⁰⁴ The Sheriff's Ordinance stipulated that these stamp duties were to be included in the charging schedule of the Hong Kong Stamp Duty Amendment Ordinance 1868.¹⁴⁰⁵

The analysis demonstrates that the main objective of the law was a practical one, namely to segregate duties to prevent fraud. If the sheriffs were allowed the dual roles of performing court duties and collecting fees, the sheriffs would have had the opportunity to abuse their powers by not reporting the income. The task of collecting fees was delegated to the officers in the Stamp Office as a control procedure to prevent fraud. There is no governmental record to specify clearly whether the aforementioned stamp duty policy succeeded in achieving its internal control objective. Nevertheless, it can be concluded that such a measure was bound to be successful provided that a proper control environment was maintained to deal with offending sheriffs through stern administrative punishments.

4.4.3 The least powerful motivator for Hong Kong stamp duty advancement

The discussion above shows that the least important imperative driving the development of stamp duty was the use of the stamp duty system to provide

¹⁴⁰⁰ Hong Kong Sheriff's Ordinance, No 1 of 1873, s 5.

¹⁴⁰¹ For the list of services provided, see Hong Kong Sheriff's Ordinance, No 1 of 1873, sch 2.

¹⁴⁰² Hong Kong Sheriff's Ordinance, No 1 of 1873.

¹⁴⁰³ Ibid s 11.

¹⁴⁰⁴ Ibid s 13.

¹⁴⁰⁵ Ibid s 15.

pragmatic solutions for administrative problems encountered by the government. Three characteristics stand out.

First, was the very low frequency of occurrence of stamp duty law enacted in response to this imperative.

Second, the impact of the rules prescribed was insignificant to the advancement of Hong Kong stamp duty system. In fact, there was no detected development to the law enacted in response to pragmatic concerns after introduction in the nineteenth century. The justification was that as Hong Kong developed with more resources, the use of stamp duty legislation to serve as an internal control measure was no longer essential. The government was able to set up other more effective control systems.

Third, all the related laws had been repealed in the nineteenth century and no traces of them could be found in the Hong Kong stamp duty law in use during the twentieth century.

4.5 Conclusion

It has been found that the secondary imperatives which moulded the Hong Kong stamp duty system during British rule, in order of priority, were the pursuit of sustainability, political demands and other less obvious pragmatic needs.

A holistic examination of all stamp duty provisions enacted with an aim to preserve the stamp duty system concludes that the Hong Kong government began to take a proactive interest in introducing legislation for the maintenance of sustainability after World War II. The analysis of the sustainability imperative shows a continuous evolution in the sub-imperatives: offering convenience, increasing the comprehensibility of the charging schedule and provisions, clarifying the jurisdiction subject to tax, incorporating noncompliance provisions, introducing taxpayer's protections and safeguards as well as restricting relief and exemptions. These enactments were usually effective in meeting the demand to maintain sustainability but they were not promulgated in significant volume. In analysing the reasons why the system could be preserved without the government's concerted effort to introduce legislation to enhance

sustainability, the contextualisation of the stamp duty history shows that the Hong Kong system relied heavily on the cardinal rule of stamp duty law derived from the British courts in the nineteenth century – to preserve the system. Interestingly, the investigation shows that these judge-made rules were originally intended to render technical clarifications without considering the question of ensuring system sustainability. Furthermore, the investigation demonstrates that the granting of near absolute power to the Hong Kong Governors pertaining to stamp duty matters, and the introduction of the British tenet of taxation only with representation into the colony, had certainly supported the maintenance of stamp duty system sustainability under British rule.

As regards the examination of the political imperatives shaping the Hong Kong stamp duty system, the evidence collected pertaining to the relationship between political history and stamp duty history demonstrates that in general, for every demand for stamp duty revenue and/or controversial provision to maintain sustainability, there is likely to be a political support to deal with the demand. Conversely, for every political demand to circumvent opposition on stamp duty matters there is likely to be a stamp duty legislative reaction to tackle such political demand.

The analysis of the process transformation of stamp duty policy-making in Hong Kong from 1867 to 1997 shows how the Hong Kong government managed to effect a change in the attitude of the Hong Kong public from opposing everything related to stamp duty in the early colonial days to a more co-operative mind-set in the early twentieth century and beyond. The Hong Kong government managed to achieve this outcome by shifting from a pre-occupation with secrecy and speed, to open discussions made possible by the creation of trust, the explanation of benefit, and frank public consultation. The interpretation of the evidence also emphasises that with limited – ‘taxation with representation’ in Hong Kong under British rule, the subsequent role of pre-legislative, frank and open public discussion with various parties on taxation matters, was of great importance to the Hong Kong government in formulating good stamp duty law. These solutions to political demands also played a key

role in preventing harmful elements from gaining a foothold within the Hong Kong stamp duty legislative process.

The study reveals the Hong Kong stamp duty system was also used to restore fiscal control and accountability within the Hong Kong administration. A related observation is that the stamp duty system acted as a fee-collection mechanism for the government to prevent fraud when Hong Kong still lacked the resources to establish a viable internal control system to secure revenue in the 1870s. The evidence affirms the stamp duty system was successful in achieving those aims.

Chapter 5 Conclusion

The aim of this study was threefold: to show how the Hong Kong stamp duty achieved its modern form; to identify the imperatives that underlay the development of this major tax; and to assess the future path of the tax in the light of this hitherto unexplored history.

In order to achieve these aims, this study examined the origins, implementation and development of stamp duty in Hong Kong over the 130 year period from its introduction in 1866 until the reversion of British sovereignty to the Chinese government in 1997. It investigated the historical experience of using the system to raise revenue and meet other objectives, and considered possible future developments.

5.1 How the Hong Kong stamp duty achieved its modern form

At the outset, the evidence shows that the Hong Kong stamp duty system realised its modern form as a result of six imperatives driving the colonial administration at various periods, operating under the mantle of British ideology regarding the governance of a colony, and reflecting the skilful administration of some well-chosen appointees to the office of Governor or senior bureaucrat of Hong Kong.

The imperatives

It has been established that Hong Kong stamp duty policies were variously structured, either in isolation or combination, in terms of three primary imperatives – financial, social, economic – and three secondary imperatives – sustainability, political, pragmatic.¹⁴⁰⁶

The first Hong Kong stamp duty statute was predominantly instituted for revenue-raising purposes, though Governor Sir Richard MacDonnell (in office 1866–1872) advocated certain non-financial motives for introducing the tax. The stamp duty system was successful in collecting the requisite revenue from the outset. It is noteworthy that this innocuous form of taxation was effective in an

¹⁴⁰⁶ See section 2.5; section 3.6; section 4.5.

economy dependent on entrepôt trade, as well as other commercial activities that typified Hong Kong in the late nineteenth century. The success of the taxation regime resulted from the abundance of taxable instruments designated for stamping.

Two distinct periods have been identified as exemplifying the imperatives that principally shaped the development of Hong Kong stamp duty in the progression to its modern form. The first period ranged from immediately after the 1866 introduction of stamp duty to the beginning of World War II; the second period ranged from the end of the World War II to the 1997 reversion of Hong Kong's sovereignty.

During the first period (ie before World War II), the analysis reveals that the financial imperative was the most significant factor in driving changes to the stamp duty legislation, with numerous regulations introduced to principally meet revenue objectives and often to satisfy secondary imperatives.¹⁴⁰⁷

From the 1860s to the 1880s, some Governors declared that certain stamp duty measures were instituted to achieve equity restoration, yet the analysis in this study supports an argument that the equity-restoring stamp duty legislation usually concealed an underlying aim to raise revenue. In short, the articulated objectives of some stamp duty legislation did not always match the outcome intended or achieved. This was attributed to the government's need to circumvent political resistance in promulgating revenue-driven stamp duty law during the system's infancy.

From the 1880s until World War II, however, the Hong Kong government usually argued that the aims of the reforms to the stamp duty were to raise revenue. It thus seems pertinent to ask: what was the reason for the changed approach? It could be that some of these revenue-driven changes were accepted by the public because they had become better conditioned to recognise the need for government to raise money in the nineteenth and early twentieth century. Nonetheless, the study has shown that the need for stamp revenue generally prompted the colonial government to suppress political

¹⁴⁰⁷ See section 3.3.13.

resistance so as to more effectively communicate the revenue aims of the stamp duty legislation.¹⁴⁰⁸ During this period, the government implemented specific strategies to neutralise opposition to the stamp duty, including control of debate in the legislature by restricting legislative time, the application of procedural justice, appropriately constituting financial committees and select committees to inform and discuss policy, creating a sense of trust between the government and taxpayers, engaging in open and sincere consultation with the public, as well as introducing stamp duty legislation that was based on British stamp duty law to ensure its political acceptability in Hong Kong. These political strategies tended to mollify the near-automatic opposition of the unofficial members of the Hong Kong Legislative Council, and the general public, with regard to the stamp duty overall. More cooperative attitudes became apparent in the last decade of the nineteenth century. Moreover, it was found that the strategies conceived to surmount political resistance also shaped how the stamp duty laws were written, the implication being that the content of the revenue-seeking stamp duty legislation was a set of permissible outputs conditioned by the selected political strategy to obtain its passage through the legislature. For example, from a historical perspective, the creation of trust would enable a simple increment to stamp duty rates to be approved with the government simultaneously lowering its expenditures.¹⁴⁰⁹ The use of procedural justice would often allow various equity-restoration provisions to be introduced, in concert with the changes to the stamp duty structures, to enhance revenue.¹⁴¹⁰ The use of cooperative consultation would normally lead to sustainable stamp duty law but the process would be time consuming.¹⁴¹¹ The restriction of legislative time for debate will generally lead to faulty stamp duty law, a strategy which cannot be maintained in the long run.¹⁴¹²

The forgoing revenue-raising initiatives could not have been effected if the system failed within a short period of implementation. When a tax system is new, it is expected that the government will intensify legislative efforts to ensure the sustainability of the system. By way of contrast, the study has demonstrated that the Hong Kong government acted counter-intuitively, in that stamp duty

¹⁴⁰⁸ See section 4.3.10.

¹⁴⁰⁹ See section 4.3.5.

¹⁴¹⁰ See section 4.3.2.

¹⁴¹¹ See section 4.3.7.

¹⁴¹² See section 4.3.6.

legislation specifically targeted at enhancing sustainability before World War II was uncommon, yet the system survived. The study offers perspectives on how this was achieved. First, Hong Kong was given a head start by adopting British stamp duty legislation that had been tested politically, fiscally and legally for some 200 years, in which time undesirable features had been filtered out.¹⁴¹³ Second, the study has demonstrated that by amending the law to allow appeals to the regular courts in 1884, the system sustainability was adequately enhanced by adopting the experience embedded in English case law.¹⁴¹⁴

The study has shown, that before World War II, there was no material relationship between stamp duty legislative changes and the provision of social welfare. The Hong Kong government had little appetite for the implementation of social policies and there was no public demand for such policies.¹⁴¹⁵ During this period, stamp duty law had also been unresponsive to economic demands.¹⁴¹⁶

After World War II until 1997, however, there emerged a need to provide social welfare within the colony, and this assumed a conspicuous role in determining how Hong Kong stamp duty achieved its modern form. Although revenue-raising was clearly a leading motivation underlying the imposition of stamp duty after World War II, the evidence suggests that it was untenable to claim that stamp duty remained simply a tool of the Hong Kong government's need for revenue with no regard to the subject matter of the charge. Careful examination of extra-statutory material shows that a succession of stamp duty legislative initiatives was promulgated with the principal objective being to abolish cumbersome stamp duties as well as encouraging private home ownership for lower income groups post-War. Other evidence revealed that stamp duty policies were promulgated to tackle the problem of the Hong Kong brain-drain that occurred as the reversion of Hong Kong's sovereignty drew near. This related class of stamp duty was not conceived for revenue-raising as it had been demonstrated that the Hong Kong government was prepared to forgo the revenue loss associated with implementation post-War. It appeared that in

¹⁴¹³ See section 2.3.

¹⁴¹⁴ See section 2.3.7; section 4.2.5; section 4.2.8.

¹⁴¹⁵ See section 2.2.3; section 3.4.

¹⁴¹⁶ See section 3.5.1.

certain instances, Hong Kong stamp duty legislative changes were intentionally and constructively conceived in order to achieve multifaceted social outcomes with no apparent ulterior motive.¹⁴¹⁷

Thus the social imperative played a major role in determining how the Hong Kong stamp duty system achieved its modern form during the post-War period, contrasting with the pre-War era when the Hong Kong government was inactive in using stamp duty to achieve social aims. The reason for the post-War change was partially due to similar developments in Britain where providing welfare had become a popular ideal. However, it was the case that the Hong Kong Governors were never subject to electorate pressure to provide welfare. As such, there were other reasons behind the shift in focus.

One Hong Kong historian has emphasised that Governor Sir Murray MacLehose (in office 1971–1982) initiated a philosophy of benevolence in Hong Kong with personal conviction.¹⁴¹⁸ Another scholar stated that MacLehose advocated social welfare be implemented in Hong Kong in the belief that ‘if Hong Kong was to be handed back (to China) it must not be a colony, but as near to an independent state as might conveniently be contrived, and in a condition that did credit to its previous owners.’¹⁴¹⁹

The historians had their various points of view regarding influences on the development of stamp duty. Nonetheless, the findings in this study when viewed through the prism of stamp duty differ from the perceptions of the aforementioned historians, suggest that these stamp duty policies (the abolition of cumbersome duties as well as encouraging private home ownership for lower income groups) were designed to meet social imperatives, though the historical reasons for promoting social development via the stamp duty system might have had a different auxiliary objective. It can be argued that the stamp duty deletions and the lowering of the stamp duty rate for entry level flats had very little to do with benevolence, but everything to do with fine-tuning cost-effective administration joined with a cynical approach by the Hong Kong government to

¹⁴¹⁷ See section 3.4.4; section, 3.4.5.

¹⁴¹⁸ John M Carroll, *A Concise History of Hong Kong* (Hong Kong, Hong Kong University Press 2007), 161.

¹⁴¹⁹ Frank Welsh, *A History of Hong Kong* (London, Harper Collins 1997), 475–76.

be seen in the eyes of the populace as caring, but in effect giving up little on the government's behalf.¹⁴²⁰ This interpretation seems to be in line with the rationalisation of the stamp duty regime as part and parcel of a political imperative to optimally position Britain for the forthcoming negotiations with China for the future of Hong Kong in the 1980s in an effort to retain Hong Kong under British control after 1997.¹⁴²¹

Even after it was resolved in the 1980s that Hong Kong would be returned to the Chinese government in 1997, the Hong Kong government, instead of standing aside, continued to be active in prescribing stamp duty policies to solve the social problem of the brain-drain.¹⁴²² The related stamp duty measures depleted billions of Hong Kong dollars from the government purse. It could be that the Hong Kong government was compelled by the Legislative Councillors and the public to tackle the social problem.¹⁴²³ A better explanation would be the parent British government was also eager to curb the brain-drain from Hong Kong as many large British corporations with head offices in London controlled large business operations as well as property empires in Hong Kong.¹⁴²⁴ It was politically sound (in Britain) for the British government to ensure there were sufficient numbers of skilled professionals in Hong Kong to run those Hong Kong establishments. Furthermore, by stabilising the British corporations' income sources in Hong Kong, these companies might be able to maintain their contributions to the British revenue as well as Hong Kong income tax. This reasoning suggests stamp duty policies that were implemented for predominantly social purposes after World War II had auxiliary political and revenue considerations during the colonial era.

Following the development to this point, the broader implication is that desirable stamp duty policies which promoted social objectives were those that reduced the forecasted stamp duty revenue depletion or even improved government revenue from another avenue and at the same time appeared to display a benevolent consideration.

¹⁴²⁰ See section 3.4.5; section 3.4.6.

¹⁴²¹ See section 3.4.6.

¹⁴²² See section 3.4.7.

¹⁴²³ Ibid.

¹⁴²⁴ Examples are John Swire & Sons Limited and HSBC Holdings plc.

It has been seen that the imposition of Hong Kong stamp duty after World War II was more responsive to the economic-growth imperative, than was the case before the War.¹⁴²⁵ Nonetheless, the evidence showed that the Hong Kong government since the late nineteenth century generally adhered to a policy of not implementing a tax policy that would interfere with the colony's freedom of trade and possibly alienate any particular group of traders.¹⁴²⁶ In the 1970s the government removed all taxable instruments except those related to property and share transactions, which action may be discerned as unfair to traders involved in property and share transactions. Nevertheless, the evidence has shown that the policy effectively removed trade barriers and enhanced freedom of trade for all other sectors to pave the way for economic development.¹⁴²⁷

Stamp duty with representation

In seeking to identify the forces shaping the growth of the Hong Kong stamp duty, apart from various imperatives and their implications, the study also demonstrated that the Hong Kong stamp duty system was shaped by the uprising in North America following the 1765 imposition of stamp duty by the British colonists in North America, leading to the American War of Independence.¹⁴²⁸ This event gave force to the principle that Hong Kong being a British colony should give its local residents the right to discuss the imposition of taxes. It has been shown that the British government adhered to this tenet for stamp duty legislation throughout the British rule of Hong Kong.¹⁴²⁹ The evidence has shown beyond doubt that the Hong Kong government initiated all stamp duty laws with local discussion before World War II. More significantly, following World War II the British government did not even comment on the stamp duty law initiated by the Hong Kong government. All Hong Kong stamp duty laws were initiated and sanctioned by the Hong Kong Legislative Council with no British influence.¹⁴³⁰

¹⁴²⁵ See section 3.5.5.

¹⁴²⁶ See section 3.5.1.

¹⁴²⁷ See section 3.5.3.

¹⁴²⁸ See section 2.4.2.

¹⁴²⁹ See section 2.4.2.

¹⁴³⁰ See section 4.3.9.

These findings should be contrasted with the conclusion reached by Gavin Ure in his examination of Hong Kong policy formation under British rule.¹⁴³¹ Ure remarked: 'It is remarkable how few policies examined originated from the Hong Kong government: indeed, nearly all originated from elsewhere'.¹⁴³² He shows that the policy to regulate *mui-tsai*¹⁴³³ was dictated by the Secretary of State for the Colonies Winston Churchill (in office 1921–1922) to an unwilling Hong Kong government. The Colonial Office also instructed the unwilling Governor Sir Alexander Grantham (in office 1947–1957) to establish a Hong Kong Housing Authority to provide low cost housing.¹⁴³⁴

The marked contrast in the differing conclusions between Ure's research and the findings in this study pertaining to promulgation of stamp duty law in Hong Kong demonstrates that the British took the lessons learned from the 1765 American stamp duty revolt seriously and refrained from repeating the same mistake again in Hong Kong. It was apparent that the British government initiated many policies applicable to Hong Kong directly from London but left the colony's stamp duty policy untouched.

The key concept of involving local participation in discussion definitely shaped the Hong Kong stamp duty legislation. As a result, Hong Kong stamp duty law was inclined towards the mercantile interest which was strongly represented in the colony.¹⁴³⁵ This resulted in stamp duty law which retained applicable rates and incidences, and an ideology that was not tempered under British rule.

Given the apparent success of the historical model of stamp duty, coupling representation with minimum interference imposed by the parent government, there seems no rationale for China and Hong Kong to adopt a different path during the term of the 1997 reversion agreement. Furthermore, representation

¹⁴³¹ Gavin Ure, *Governors, Politics, and the Colonial Office: Public Policy in Hong Kong, 1918–58* (Hong Kong, Hong Kong University Press 2012).

¹⁴³² Gavin Ure, *Governors, Politics, and the Colonial Office: Public Policy in Hong Kong, 1918–58* (Hong Kong, Hong Kong University Press 2012), 218.

¹⁴³³ In the nineteenth century, many Chinese girls and women in Hong Kong were *mui-tsai* who had been sold to wealthier families through an intermediary known as a pocket mother. This practice helped poor families find better homes for their daughters, while providing domestic help for wealthier families. See section 3.4.1.

¹⁴³⁴ Gavin Ure, *Governors, Politics, and the Colonial Office: Public Policy in Hong Kong, 1918–58* (Hong Kong, Hong Kong University Press 2012), 218.

¹⁴³⁵ See section 2.2.3.

and/or mechanisms to ensure the stamp duty legislation is not biased towards the interests of any particular community group may be considered a worthwhile improvement.

The human factor

The study has shown that another influence enabling the Hong Kong stamp duty system to achieve its modern form is undoubtedly the human factor. Hong Kong colonial officials were the backbone of stamp duty innovation and implementation.

If only one person could be identified as responsible for the Hong Kong stamp duty system achieving its modern form, that person is Governor Sir Richard MacDonnell (in office 1866–1872). The evidence shows that he played a key role in the introduction of Hong Kong stamp duty legislation and in the first stamp duty amendment, which enabled the legislation to survive.¹⁴³⁶ Without MacDonnell, the introduction of stamp duty in the colony might have been delayed indefinitely and the stamp duty system might not have survived the initial implementation phase, thus no doubt significantly affecting the evolution, if not the very existence, of the stamp duty in Hong Kong.

The evidence has demonstrated¹⁴³⁷ that MacDonnell handled fiscal matters efficiently and that he was a skilled and astute debater. In respect of the original Hong Kong Stamp Ordinance 1866,¹⁴³⁸ he drafted the law himself, made changes himself and personally defended the law, with success, against public objection. He was determined to introduce stamp duty into Hong Kong. His dispatches to the Colonial Office were to the point and brought out the vital issues for London's attention and approval.¹⁴³⁹ The stamp duty regime that he introduced proved to be a steady revenue producer and has been sustained until the present day. Indubitably, he is the father of Hong Kong stamp duty.

MacDonnell's experience, gained from over twenty years as Colonial Governor for the British Empire, proved invaluable when he needed to ease financial

¹⁴³⁶ See section 3.3.1.

¹⁴³⁷ See section 2.1.1; section 3.3.1

¹⁴³⁸ No 12 of 1866.

¹⁴³⁹ See section 2.1.1; section 2.1.2.

pressure by adding chargeable instruments to the stamp duty legislation only six months after its implementation.¹⁴⁴⁰ He demonstrated his political intelligence by developing and executing a plan that enabled the amendments to be passed with no resentment from the legislators or the public.¹⁴⁴¹ A comparison with John Davis, the second Governor of Hong Kong (in office 1844–1848), is striking. He complained that ‘it was more difficult to govern the few hundred English than the many thousand Chinese in Hong Kong’¹⁴⁴² and subsequently resigned, partly due the British community’s hostility towards him for his imposition of the house rate and his attempts to impose other taxes. Through the analysis of Hong Kong stamp duty history, it is apparent that MacDonnell’s political intelligence had won him the respect of all sections of the community,¹⁴⁴³ despite his implementation of a major branch of revenue law in Hong Kong.

The evidence reveals that the human factor not only impacted the Hong Kong stamp duty introduction and development during its infancy stage but also continued to shape the law in the ensuing century. A half century following MacDonnell’s introduction of stamp duty into Hong Kong, there emerged another key figure responsible for momentous advancements in the stamp duty system. Attorney General Joseph Kemp (in office 1915–1930) was responsible for the 1921 Hong Kong stamp duty reform.¹⁴⁴⁴ The study of legislative records showed that he introduced into Hong Kong many stamp duty laws that were ahead of Britain at that time,¹⁴⁴⁵ venturing to create and implement groundbreaking stamp duty regulations that were opposed by the British Board of Inland Revenue.

Kemp’s painstaking efforts enabled the passing of novel stamp duty measures that significantly enhanced the permanent revenue of the colony. These stamp duty measures successfully counterbalanced the loss of substantial revenue from opium resulting from the British government’s suppression of the opium

¹⁴⁴⁰ Hong Kong Stamp Amendment Ordinance, No 3 of 1868.

¹⁴⁴¹ See section 3.3.1; section 4.3.1.

¹⁴⁴² G B Endacott, *A Biographical Sketch-Book of Early Hong Kong* (Singapore, Eastern Universities Press 1962), 25.

¹⁴⁴³ G B Endacott, *A History of Hong Kong* (London, Oxford University Press 1958), 159.

¹⁴⁴⁴ Hong Kong Stamp Ordinance, No 8 of 1921.

¹⁴⁴⁵ See section 3.3.7; section 4.2.2; section 4.2.4.

trade in 1921.¹⁴⁴⁶ Most of his state-of-the-art stamp duty methods and procedures introduced in 1921 have been retained till the present day.¹⁴⁴⁷

Another half century following Kemp's reform, the analysis of Hong Kong stamp duty legislative development has indicated that Financial Secretary Haddon-Cave (in office 1971–1981) was another colonial official who personally made a significant contribution to the advancement of the system. Instead of adding novel heads of charge (consisting of various taxable instruments) to the Hong Kong Stamp Ordinance like most of his stamp duty law-making predecessors, Haddon-Cave set forth to greatly simplify the Hong Kong stamp legislation by drastically reducing the heads of charge in the fiscal year 1978/79 and concentrating on the imposition of stamp duties on transactions relating to immovable properties and stocks. The evidence confirmed Haddon-Cave's ability to weight up the situation. He boldly reformed the Hong Kong stamp duty legislation and rendered it ahead of Britain's legislation at that time. Haddon-Cave's measures were proven to be a boost to the Hong Kong economy and at the same time greatly enhanced stamp duty revenue.¹⁴⁴⁸

5.2 Lessons and pitfalls from history

The second set of conclusions drawn from the study relates to the lessons and pitfalls learned from the history of the implementation of Hong Kong stamp duty during British rule. It is submitted that the understanding of this accumulated knowledge is an important contributor to the informed and effective decision-making by Hong Kong legislators in the future. These lessons are considered in terms of the key imperatives that the study has identified as having driven stamp duty development in Hong Kong, namely the enhancement of revenue, the promotion of social as well as economic policies.

Enhancement of revenue

The study has consistently shown that revenue-enhancing stamp duty law focused solely on the stamp duty structure, such as increasing tax rates or widening the tax base, was unlikely to achieve its financial objective. In particular, it has been demonstrated that doubling or trebling stamp duty rates

¹⁴⁴⁶ See section 3.3.7; Letter from Reginald Stubbs to Winston Churchill (23 June 1921), CO129/468, 181.

¹⁴⁴⁷ See section 3.3.7; section 4.2.2; section 4.2.4.

¹⁴⁴⁸ See section 3.5.3.

would not necessarily yield a similar multiple of duties actually collected, in part due to the vagaries of human behaviour.¹⁴⁴⁹

In order for stamp duty reform to be financially successful, it is a necessary precondition that the stamp duty mechanism needs to be considered while altering the stamp duty structure. Whilst it may appear that the modification of the stamp duty mechanism has a slight relationship to revenue enhancement, the study has nonetheless revealed that every introduction of a novel stamp duty mechanism to raise money is a step towards achieving the revenue goal.¹⁴⁵⁰ Further, the study has shown that simply amending or reinforcing the existing stamp duty mechanism without altering the related structure, is also effective in improving revenue collection.¹⁴⁵¹

The theoretical arguments for these conclusions suggest the order of actions to pursue when a government is confronted with the raising of extra revenue from its stamp duty system. First, consider reinforcing the existing mechanisms. Second, consider making legislative changes to the mechanisms. Finally, consider altering the legislation for both the stamp duty mechanisms as well as the structures. In any event, legislators should avoid the trap of significantly raising the stamp duty rates, or increasing the number of chargeable instruments, to enhance revenue. The study has shown that some Hong Kong Governors or senior bureaucrats fell into this trap in the absence of a clear understanding of the past record of stamp duty implementation.¹⁴⁵²

Having emphasised the importance of stamp duty mechanisms in raising revenue, the historical analysis has exposed one important exception. Offering a stamp duty mechanism to improve taxpayer convenience alone would not necessarily enhance revenue. In order to enhance revenue, convenience has to be offered together with other incentives similar to those used by British Chancellor of the Exchequer William Gladstone (in office 1852–1855) in his 1854 penny tax reform.¹⁴⁵³ The Hong Kong experience has shown that novel stamp duty mechanisms which offer additional convenience to the taxpayers

¹⁴⁴⁹ See section 3.3.6.

¹⁴⁵⁰ See section 3.3.2; section 3.3.3; section 3.3.4; section 3.3.7.

¹⁴⁵¹ See section 3.3.2.

¹⁴⁵² See section 3.3.1; section 3.3.6; section 3.3.11.

¹⁴⁵³ See section 2.3.6.

with a revenue–enhancement objective have to be coupled with simplification of the law and equity restoration.¹⁴⁵⁴ The implication is that the failure of a stamp duty mechanism to improve taxpayer convenience is likely to cause revenue depletion, yet the passing of legislation to improve convenience alone will not enhance revenue. A simple direct relationship cannot be established.

This also suggests that law designed to restore equity may lead to an increase in stamp duty revenue. When the relationship between equity restoration and revenue collection was examined,¹⁴⁵⁵ it was seen that taxpayers were likely to engage in tax evasion if the stamp duty system was perceived as inequitable and caused a loss of revenue. However, the analysis of Hong Kong stamp duty development in the area of revenue-raising suggests that it would also be financially ineffectual to restore equity by the use of complicated legislation that taxpayers did not necessarily understand and therefore shunned. Moreover, the study found that it is undesirable to introduce any equity restoration stamp duty law that might have the effect of encouraging further evasion.¹⁴⁵⁶ Thus, a careful balance needs to be struck between these factors to ensure a sustainable stamp duty law to raise revenue.

Promotion of social policies

The study has repeatedly shown that the use of the stamp duty system as the sole means by which to promote social policies, notably to curb Hong Kong property prices so as to ease overcrowded living conditions and to curtail speculation, has never been effective. This was the case whether the total taxes levied on immovable properties were frozen (as in 1866) or increased (subsequent to 1866) by the institution of the Hong Kong stamp duty system or by making changes to the stamp duty legislation.¹⁴⁵⁷ Investigating this historical situation revealed that the phenomenon was attributed to the limited supply of land in Hong Kong, rendering immovable properties as asset goods that were purchased for their potential to accrue value rather than purchased for consumption. It has been learned that in order to curb Hong Kong property

¹⁴⁵⁴ See section 3.3.3.

¹⁴⁵⁵ Ibid.

¹⁴⁵⁶ Ibid.

¹⁴⁵⁷ See section 2.1.2; section 4.2.4.

prices, other non-fiscal measures had to be implemented.¹⁴⁵⁸ The utilisation of stamp duty as a stand-alone regulatory tool, therefore, would be unable to dampen the escalation of Hong Kong property prices.

This pattern suggests that stamp duty should not be used as a medium to regulate housing prices in Hong Kong. It is thus a moot point why the Hong Kong government continued to increase stamp duty rates recently in the 2010s¹⁴⁵⁹ with an articulated intention to regulate soaring Hong Kong property prices. It is possible that the legislators were genuinely not aware of the futility of similar policies over the 150 years of Hong Kong stamp duty history. Nonetheless, it is more plausible to conclude that the government knew that stamp duty increases were ineffectual in curbing property prices but decided to take stock of the situation and went ahead with increasing stamp duty rate to raise additional revenue. In short, it has not been accepted practice in recent decades to institute revenue law changes simply to raise revenue. A strong non-financial aim is required to overcome political resistance. Thus, escalating property prices serve as a timely reminder for the government to raise stamp duty rates on property conveyances so as to achieve undisclosed financial goals.

Although the evidence showed that the use of stamp duty was not effective in curbing soaring property prices, the stamp duty history after World War II showed that stamp duty law was used successfully as a regulatory tool to encourage home ownership for the low- and middle-income, groups. This was achieved by reducing the stamp duty rates levied on houses suitable for this class of Hong Kong residents as well as by offering marginal stamp duty relief.¹⁴⁶⁰

Integrating and synthesising the relevant findings, it is clear that in order for legislative efforts to be effectual in promoting the socially desirable objective of encouraging home ownership, they should be promulgated when properties are being traded in a steady market. During a soaring property market, any reduction in stamp duty only encourages more property speculation, driving

¹⁴⁵⁸ See section 4.2.4.

¹⁴⁵⁹ Hong Kong Stamp Amendment Ordinance, No 14 of 2014, s 28.

¹⁴⁶⁰ See section 3.4.5.

prices upwards and discouraging home ownership. A soaring property market is a signal to the government to exploit the circumstances for budgetary relief. The implementation of stamp duty law to promote a social objective related to housing issues during a booming property market will be futile.

Promotion of economic policies

The study has shown that the less-is-more approach articulated by supply-side economists – advocating the reduction in tax rates and tax regulation, increasing the incentive to save and invest and produce economic benefits that trickle down into the overall economy – found favour in Hong Kong stamp duty reform during the 1970s.¹⁴⁶¹ In the 1970s, the government substantially reduced the number of chargeable instruments. Ultimately, during the 1980s, the Hong Kong government only imposed stamp duty on instruments related to the sale and purchase of immovable properties and stocks. It has been shown that stamp duty collections soared after the reduction of chargeable instruments. As such, using stamp duty as a gauge for economic advancement, the statistics¹⁴⁶² showed significant economic growth brought about by the less-is-more approach. The additional economic wealth generated incidental to the reduction of stamp duty rates and their occurrence, was reflected as a rise in trading prices as well as transaction volumes in respect of these asset goods (Hong Kong immovable properties and stocks). The related transactions were subjected to Hong Kong stamp duty and raised stamp duty collections. Thus, the evidence demonstrates that the less-is-more approach not only stimulated economic growth but also increased stamp duty collection.

Nevertheless, the study of Hong Kong stamp duty history also questioned whether it is valid that the application of the less-is-more approach to the stamp duty system would always be capable of enhancing stamp revenue. It could be that supply-side economics proved effective in enhancing revenue (besides its economic enhancement effect) in the Hong Kong stamp duty reform carried out in the 1970s, because Hong Kong had identified crucial collection pillars of sales and purchases documents for immovable properties as well as stocks that

¹⁴⁶¹ See section 3.5.3.

¹⁴⁶² Ibid.

would embrace the economic expansion brought about by the less-is-more approach.

It is surmised that before World War II, when the financial and property markets were yet to establish themselves as significant economic power-houses in Hong Kong, it was doubtful whether the same result would be achieved using the same less-is-more approach. For example, in the nineteenth century, it would have been financially disastrous if the Hong Kong government had decided to raise revenue by cancelling stamp duties on all instruments except conveyances and share contract notes. At that time, property and share transactions might not have been of sufficient substance to compensate for the loss of wealth and economic growth occasioned by the reduction of stamp duties.

5.3 The future of Hong Kong stamp duty

The third set of conclusions drawn from the study relate to the specifics indicating the future path for stamp duty in Hong Kong, whether embellished, maintained or abolished, and considered in the light of Hong Kong's historical background, present circumstances and possible future situation.

It has been discussed that the general grievances about taxes which may lead to their abolition, are usually categorised in terms of the following four groups: excessively complicated; difficult to enforce; unfair; damaging to the economy.¹⁴⁶³

Stamp duty is complicated

It has been seen that the Hong Kong Stamp Ordinance was made increasingly more complicated from the late nineteenth century.¹⁴⁶⁴ It was not until the 1970s that the government began to take resolute steps to greatly simplify the stamp duty law thus enabling its sustainability, remaining as an important source of revenue till the present day.¹⁴⁶⁵

¹⁴⁶³ See section 1.6.

¹⁴⁶⁴ See section 4.2.2.

¹⁴⁶⁵ Ibid; Hong Kong Stamp Ordinance, No 31 of 1981.

Since the stamp duty law was appropriately simplified in the 1970s as well as in the 1980s, and further examination shows that the amendments introduced thereafter did not further complicate the law, it is submitted that at the present time, when considered in isolation of other factors, it is not rational to abolish the Hong Kong stamp duty system based on the rhetoric that it is too complicated.

Stamp duty is difficult to enforce

It has been learned that besides the collection and noncompliance provisions adopted from Britain in 1866, the colonial government developed many effective methods for enforcing stamp duty.¹⁴⁶⁶ The evaluation of Hong Kong stamp duty collection methods, as well as procedural developments in countering noncompliance, show that Hong Kong stamp duty law has not been difficult to enforce.

The evidence collected shows that apart from the difficulties in enforcing stamp duty on trading stocks in the early twentieth century, due to the then prevalent practice of using blank transfers in Hong Kong,¹⁴⁶⁷ there were no other conspicuous problems that required specific legislative effort to enforce collection. The study has shown that the blank transfer problem was resolved completely in 1946 by making changes to the incidence of the tax.¹⁴⁶⁸ The evidence gathered leads to the conclusion that it is unacceptable to argue for the abolition of Hong Kong stamp duty by claiming that it was too tough to be enforced.

Stamp duty is unfair

It has been discussed that the main argument for stamp duty being regarded as unfair was due to whether tax transactions:

1. generated a profit or loss;
2. impeded the efficient allocation of capital;
3. created double taxation.¹⁴⁶⁹

¹⁴⁶⁶ See section 2.3.6; section 3.3.2; section 3.3.4; section 3.3.7; section 3.3.10; section 4.2.4.

¹⁴⁶⁷ See section 4.2.4.

¹⁴⁶⁸ Ibid.

¹⁴⁶⁹ See section 1.6.

The findings in this study enabled a point-to-point discussion from an historical perspective and offered suggestions for a possible future path.

Regarding the first criticism, fundamentally, it has been learned that stamp duty is a non-inquisitorial tax on transactions that could be levied without the need to ascertain income.¹⁴⁷⁰ It has been learned that, in order to instil vertical equity, the British government had instituted the concept of *ad valorem* duty to be levied on transaction values stated on the taxable instruments as early as in 1782.¹⁴⁷¹ The evidence demonstrates that stamp duty vertical equity was achieved by assessing the quantum of the transaction values stated on the taxable written documents in order to gauge the taxpayers' liability.

In 1866, Hong Kong had adopted the concept and continued to make improvements to the *ad valorem* system in the quest for stamp duty vertical equity.¹⁴⁷² The investigation of stamp duty history has revealed that the government had frequently introduced legislative changes to restore stamp duty vertical equities by replacing fixed rates with *ad valorem* rates whenever possible, adjusting the *ad valorem* rates and offering deductions. Furthermore, it has been learned that the government also ensured horizontal equity by promulgating mechanisms to educate taxpayers as well as punishing defaulters to ensure equality of treatment.¹⁴⁷³

By close examination of the historical Hong Kong Stamp Ordinances, it emerges that it would be illogical and impractical to measure income generated in respect of each and every instrument that appeared in the 130 years of Hong Kong stamp duty under British rule in order to levy stamp duty.¹⁴⁷⁴ The reason is that not every instrument would generate quantifiable income.¹⁴⁷⁵ As revealed above, Hong Kong stamp duty system had its own peculiar methods to restore fairness; it was not satisfactory to state that the duty was unjust merely because it did not assess tax based on the income benchmark. It could be that the

¹⁴⁷⁰ See section 2.2.1.

¹⁴⁷¹ See section 2.3.5.

¹⁴⁷² Ibid.

¹⁴⁷³ See section 3.3.1; section 3.3.2; section 3.3.3; section 3.3.5.

¹⁴⁷⁴ See section 2.3.2, section 3.3; Appendices I to V.

¹⁴⁷⁵ Ibid. As clear evidence, it would be impossible to quantify income from declarations, mortgages, notarial acts, warrants of attorney and so on.

critic¹⁴⁷⁶ confused the accepted principle for determining the fair distribution of a tax burden based on ability-to-pay,¹⁴⁷⁷ with the ability or potential to generate income. It is submitted that income measurement was only one of the many yardsticks of a taxpayer's prosperity under the ability-to-pay approach. The very notion of assessing the fairness of the stamp duty system, based solely on the concept borrowed from income taxation, is unjustified.

The second opposing view relates to the stamp duty being distortional as it was only levied on instruments relating to immovable properties and stock transactions. It has been found that stamp duty was initially introduced in Hong Kong to widen the narrow Hong Kong tax base in 1866 to instil fairness into the Hong Kong tax system.¹⁴⁷⁸ This was achieved by levying duties on a variety of instruments. The evidence shows that the Hong Kong stamp duty regime was effectual in attaining the pre-set goal of widening the tax base.¹⁴⁷⁹ The system continued to impose stamp duties on multifaceted instruments until 1978.¹⁴⁸⁰ In 1978, Financial Secretary Haddon-Cave (in office 1971–1981) decided to narrow the scope of charge facilitating the less-is-more approach in order to accomplish an economic objective.¹⁴⁸¹

It must be concluded that the present stamp duty distortional effect as observed by the critic today was shaped in 1978 to expedite economic development.¹⁴⁸² It is submitted that, if the need for revenue arises and the public demands a diversity of taxes to restore fairness, stamp duty would be an important choice to realise these objectives, as has been demonstrated in the past.¹⁴⁸³ To be more specific, with regard to the critic's rhetoric about it being unfair that purchases such as antiques, jewellery and works of art are not subject to stamp

¹⁴⁷⁶ See section 1.6.

¹⁴⁷⁷ Ability-to-pay means one's tax burden should be related to how well-off one is. In this view, an affluent entity or individual could more easily afford to pay taxes, and this should influence how the burden of taxes was apportioned. In other words, tax liability should be linked to the taxpayer's prosperity. See Joel Slemrod and Jon Bakija, *Taxing Ourselves: A Citizen's Guide to the Debate over Taxes* (4th edn, Cambridge Massachusetts, United States, MIT Press 2008), 64.

¹⁴⁷⁸ See section 2.1.2.

¹⁴⁷⁹ Ibid.

¹⁴⁸⁰ See section 3.5.3; Appendices I to V.

¹⁴⁸¹ See section 3.5.3.

¹⁴⁸² See section 3.5.3; Appendices I to V.

¹⁴⁸³ See section 2.1.2.

duty,¹⁴⁸⁴ it is submitted that in the past, such transactions were subjected to stamp duty imposed on receipts. It is also submitted that documents arising from the sales and purchase of antiques, jewellery and works of art such as instruments under seal to certify the authenticity of the items, would have been subject to Hong Kong stamp duty in the past.¹⁴⁸⁵ As such, the Hong Kong government may not want to relinquish the stamp duty system lightly at this moment due to the distortional-effect criticism which argued that the stamp duty system was unfair.

Relating to the third opposing view that stamp duty caused double taxation, it has been shown that the imposition of stamp duty on conveyancing of Hong Kong immovable properties as well as shares dealing transactions would indeed amount to the collection of capital gains tax or income tax.¹⁴⁸⁶

However, it could not be said that stamp duty imposed on such Hong Kong assets created unfairness in taxing the same capital gains, as Hong Kong did not levy any form of capital gains tax under British rule (except for the two years after World War II).¹⁴⁸⁷ In this respect, inequitable double taxation caused by the overlapping of stamp duty and capital gains tax was not detected.

As Hong Kong began to levy income tax in the 1940s,¹⁴⁸⁸ inequitable double taxation caused by the overlapping of stamp duty and income tax was detected. Nevertheless, it has been argued that only the sellers would be subject to such inequities when they were liable to settle both the *ad valorem* stamp duty and income tax in respect of the documents pertaining to the sale of the same immovable properties (or shares).¹⁴⁸⁹

In light of the findings, it is submitted that if necessary, the law can be embellished by granting a tax credit on stamp duty paid on the income tax assessment in respect of the same assets to solve the problem in the future.

¹⁴⁸⁴ See section 1.6.

¹⁴⁸⁵ See Appendices I to V.

¹⁴⁸⁶ See section 3.3.9.

¹⁴⁸⁷ See section 3.3.9.

¹⁴⁸⁸ See section 1.7; Michael Littlewood, *Taxation without Representation: The History of Hong Kong's Troublingly Successful Tax System* (Hong Kong, Hong Kong University Press 2010), 39.

¹⁴⁸⁹ See section 3.3.9.

Stamp duty is bad for the economy

From the historical point of view, it has been convincingly shown that the imposition of stamp duties on immovable properties in Hong Kong would not diminish the capital values of the houses in the short run or indeed in the long run.¹⁴⁹⁰ Essentially, there was also no evidence to suggest that increased stamp duty rates would dampen or curtail Hong Kong residents from undertaking self-improvement and asset accretion, especially in housing.¹⁴⁹¹ This viewpoint is exacerbated by the observation that immovable properties are scarce asset goods in Hong Kong.¹⁴⁹²

Nicolas Gibb and John Wakeham advocated that a stamp duty system concentrated on imposing duties on instruments related to immovable properties ought to be abolished.¹⁴⁹³ This is contrasted with the actual results derived from the investigation of the Hong Kong stamp duty history, yielding a conclusion that their arguments were not applicable to Hong Kong in respect of the imposition of stamp duty on documents related to immovable properties. On this account, stamp duty should not be abolished.

The historical analysis revealed that the Hong Kong government realised the negative economic impact of imposing heavy stamp duties on stock transactions, reducing Hong Kong's competitive edge as a financial centre in the 1980s.¹⁴⁹⁴ It has been noted that in order to maintain competitiveness, the colonial government took continuous steps to decrease stamp duty rates as well as to exempt duties (for certain specific transactions) imposed on stock transactions from the 1980s until the 1997 reversion of sovereignty.¹⁴⁹⁵ So far, the historical evidence shows that the collective measures taken by the government were successful in assisting Hong Kong to maintain its status as a prominent financial centre.¹⁴⁹⁶

¹⁴⁹⁰ See section 2.1.2.

¹⁴⁹¹ See section 4.2.4.

¹⁴⁹² See section 2.1.2.

¹⁴⁹³ See section 1.6.

¹⁴⁹⁴ See section 3.5.4.

¹⁴⁹⁵ Ibid.

¹⁴⁹⁶ Ibid.

The historical findings suggested that to maintain the competitiveness of its stock market, it may be better, at this moment, for Hong Kong to adhere to its historically successful formula of assessing the situation and prescribing stamp duty inducements for a particular class of stock transactions or else adjust the stamp duty rates across the board, as necessary. This is the case, as the Hong Kong government must also consider the wisdom of relinquishing its tax options on stock transactions, when the Hong Kong residents, as well as the world-at-large, are permitted to derive monetary benefits from the Hong Kong financial market.

In light of the analysis of the possible factors in favour of the removal of the stamp duty system in Hong Kong, the only contentious issue signifying the potential of a repeal of Hong Kong stamp duty was the possibility of double taxation of stamp duty and income tax on gains derived from trading (not long-term investment) of immovable properties and stocks by taxpayers. In this regard, a possible future remedy has been suggested above. As such, at present, it is not justified to abolish the entire Hong Kong stamp duty system based on this ground alone. It is submitted that without any material changes in the contextual circumstances confronting Hong Kong, such as the state of its economy and the balance between stamp duty and other forms of taxation as compared to 1997, the Hong Kong stamp duty system should be maintained in the near future.

The study analysed the history of Hong Kong stamp duty to ascertain how the system fulfilled various pre-determined objectives and satisfied the context to survive during different stages of Hong Kong's development from relatively less developed circumstances to the present time. It identified and analysed the nexus between the changing statutory expression of the stamp duty and the financial, social, economic and political forces that were identified as shaping the law. This material interaction between the legal provisions of the stamp duty and wider imperatives is so powerful that it must be considered in formulating the future role of the Hong Kong stamp duty system. With apparent outstanding success, the Hong Kong system is increasingly looked upon by other jurisdictions as a model, Mainland China constituting the main example. The study has provided not only Hong Kong itself, but also these other jurisdictions

with an historical analysis of the evolution of the stamp duty which can be used to assess whether the historical cause of the problems encountered by those other jurisdictions are the same as they were in Hong Kong, and whether the solutions adopted by Hong Kong to resolve similar issues can be implemented effectively in their countries.

APPENDICES

Appendix I: The summary of changes to Hong Kong stamp duty heads of charge from 1866 to 1900

Head of charge	1866 Stamp Ordinance	1866 category	1868 Stamp Amendment Ordinance	1868 category	1873 Governor's Order	1884 Stamp Ordinance	1884 category	1886 Stamp Ordinance	1886 category	1894 Stamp Amendment Ordinance	1894 category
Adjudication fees	Adjudication fees	Specified within the Stamp Ordinance and not classified as head of charge under the schedule annexed to the Ordinance	Adjudication fees	Specified within the Stamp Duty Ordinance and not classified as head of charge under the schedule annexed to the Ordinance		Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Head 1
Affidavits	Not enacted	Not enacted	Not enacted	Not enacted		Not enacted	Not enacted	Not enacted	Not enacted	Affidavits	No category
Agreements	Agreements	Head 1	Agreements ^a	Head 1		Agreements ^b	Head 2	Agreements	Head 2	Agreements	Head 2
Arbitration awards	Not enacted	Not enacted	Not enacted	Not enacted		Arbitration awards ^c	Head 3	Arbitration awards	Head 3	Arbitration awards	Head 3
Articles of clerkship	Not enacted	Not enacted	Articles of clerkship	Head 23		Articles of clerkship	Head 4	Articles of clerkship	Head 4	Articles of clerkship	Head 4
Attested copies	Not enacted	Not enacted	Not enacted	Not enacted		Attested copies	Head 5	Attested copies	Head 5	Attested copies	Head 5
Bank cheques	Not enacted	Not enacted	Not enacted	Not enacted		Bank cheques ^d	Head 6	Bank cheques	Head 6	Bank cheques	Head 6
Bank notes	Bank notes	Head 2	Bank notes	Head 2		Bank notes	Head 7	Bank notes	Head 7	Bank notes	Head 7
Bills of exchange and promissory notes	Bills of exchange and promissory notes	Head 3	Bills of exchange and promissory notes ^e	Head 3		Bills of exchange and promissory notes ^f	Head 8	Bills of exchange and promissory notes	Head 8	Bills of exchange and promissory notes	Head 8
Bills of lading	Bills of lading	Head 4	Bills of lading	Head 4		Bills of lading	Head 9	Bills of lading	Head 9	Bills of lading	Head 9

Appendix I Cont'd 1

Head of charge	1866 Stamp Ordinance	1866 category	1868 Stamp Amendment Ordinance	1868 category	1873 Governor's Order	1884 Stamp Ordinance	1884 category	1886 Stamp Ordinance	1886 category	1894 Stamp Amendment Ordinance	1894 category
Bonds concerning respondentia and bottomry	Bonds concerning respondentia and bottomry	Head 5	Bonds concerning respondentia and bottomry	Head 5		Bonds concerning respondentia and bottomry ^g	Head 10	Bonds concerning respondentia and bottomry	Head 10	Bonds concerning respondentia and bottomry	Head 10
Broker's notes	Not enacted	Not enacted	Not enacted	Not enacted		Broker's notes ^h	Head 11	Broker's notes	Head 11	Broker's notes	Head 11
Charter parties	Charter parties	Head 6	Charter parties	Head 6		Charter parties	Head 12	Charter parties	Head 12	Charter parties	Head 12
Copy charter	Not enacted	Not enacted	Not enacted	Not enacted		Copy charter ⁱ	Head 13	Copy charter	Head 13	Copy charter	Head 13
Cognovit and arbitration awards	Not enacted	Not enacted	Cognovit and arbitration awards	Head 26		Repealed ^j	Repealed	Repealed	Repealed	Repealed	Repealed
Conveyances	Conveyances	Head 13	Conveyances	Head 13		Conveyances	Head 14	Conveyances	Head 14	Conveyances	Head 14
Co-partnership deeds	Not enacted	Not enacted	Co-partnership deeds	Head 25		Co-partnership deeds	Head 15	Co-partnership deeds	Head 15	Co-partnership deeds	Head 15
Declarations of trust	Not enacted	Not enacted	Not enacted	Not enacted		Declarations of trust	Head 16	Declarations of trust	Head 16	Declarations of trust	Head 16
Deeds of gift	Not enacted	Not enacted	Not enacted	Not enacted		Deeds of gift ^k	Head 17	Deeds of gift	Head 17	Deeds of gift	Head 17
Duplicates or counterparts	Duplicates or counterparts	Head 17	Duplicates or counterparts	Head 17		Duplicates or counterparts	Head 18	Duplicates or counterparts	Head 18	Duplicates or counterparts	Head 18
Emigration fees	Not enacted	Not enacted	Not enacted	Not enacted	Emigration fees	Emigration fees	Head 19	Emigration fees	Head 19	Emigration fees	Head 19
Foreign attachment bonds	Not enacted	Not enacted	Not enacted	Not enacted	Foreign attachment bonds	Foreign attachment bonds	Head 20	Foreign attachment bonds	Head 20	Foreign attachment bonds	Head 20
Instruments under seal	Instruments under seal	Head 21	Instruments under seal	Head 21		Instruments under seal	Head 21	Instruments under seal	Head 21	Instruments under seal	Head 21

Appendix I Cont'd 2

Head of charge	1866 Stamp Ordinance	1866 category	1868 Stamp Amendment Ordinance	1868 category	1873 Governor's Order	1884 Stamp Ordinance	1884 category	1886 Stamp Ordinance	1886 category	1894 Stamp Amendment Ordinance	1894 category
Leases at a premium	Leases at a premium	Head 18	Leases at a premium	Head 18		Leases at a premium	Head 22	Leases at a premium	Head 22	Leases at a premium	Head 22
Lease duplicates	Not enacted	Not enacted	Not enacted	Not enacted		Lease duplicates	Head 23	Lease duplicates	Head 23	Lease duplicates	Head 23
Leases at a premium and a rent	Leases at a premium and a rent	Head 20	Leases at a premium and a rent	Head 20		Repealed ^l	Repealed	Repealed	Repealed	Repealed	Repealed
Leases at a rent	Leases at a rent	Head 19	Leases at a rent	Head 19		Leases at a rent	Head 24	Leases at a rent	Head 24	Leases at a rent	Head 24
Letters of hypothecation	Letters of hypothecation	Head 16	Letters of hypothecation	Head 16		Letters of hypothecation ^m	Head 25	Letters of hypothecation	Head 25	Letters of hypothecation	Head 25
Mortgages	Mortgages	Head 14	Mortgages	Head 14		Mortgages	Head 26	Mortgages	Head 26	Mortgages	Head 26
Notarial acts	Notarial acts	Head 10	Notarial acts	Head 10		Notarial acts	Head 27	Notarial acts	Head 27	Notarial acts	Head 27
Notes of protest	Notes of protest	Head 9	Notes of protest	Head 9		Notes of protest ⁿ	Head 28	Notes of protest	Head 28	Notes of protest	Head 28
Policies of insurance	Not enacted	Not enacted	Policies of insurance	Head 22		Policies of insurance ^o	Head 29	Policies of insurance	Head 29	Policies of insurance	Head 29
Powers of Attorney	Powers of Attorney	Head 8	Powers of Attorney	Head 8		Powers of Attorney	Head 30	Powers of Attorney	Head 30	Powers of Attorney ^p	Head 30
Probates and letters of administration	Probates and letters of administration	Head 12	Probates and letters of administration	Head 12		Probates and letters of administration	Head 31	Probates and letters of administration	Head 31	Probates and letters of administration	Head 31
Re-assignments of mortgaged property	Re-assignments of mortgaged property	Head 15	Re-assignments of mortgaged property	Head 15		Repealed ^q	Repealed	Repealed	Repealed	Repealed	Repealed
Receipts	Receipts	Head 11	Receipts	Head 11		Receipts	Head 32	Receipts	Head 32	Receipts	Head 32

Appendix I Cont'd 3

Head of charge	1866 Stamp Ordinance	1866 category	1868 Stamp Amendment Ordinance	1868 category	1873 Governor's Order	1884 Stamp Ordinance	1884 category	1886 Stamp Ordinance	1886 category	1894 Stamp Amendment Ordinance	1894 category
Servant security bonds	Not enacted	Not enacted	Not enacted	Not enacted		Servant security bonds	Head 33	Servant security bonds	Head 33	Servant security bonds	Head 33
Settlements	Not enacted	Not enacted	Not enacted	Not enacted		Settlements	Head 34	Settlements	Head 34	Settlements	Head 34
Surrenders of a lease	Not enacted	Not enacted	Not enacted	Not enacted		Not enacted	Not enacted	Not enacted	Not enacted	Surrenders of a lease	No category
Transfers of shares in any public company	Transfers of shares in any public company	Head 7	Transfers of shares in any public company	Head 7		Transfers of shares in any public company	Head 35	Transfers of shares in any public company	Head 35	Transfers of shares in any public company	Head 35
Warrants of attorney	Not enacted	Not enacted	Warrants of attorney	Head 24		Repealed	Repealed	Repealed	Repealed	Repealed	Repealed

Note: Each head of charge might contain one or more taxable instrument(s). Only those Ordinances that effected changes to the heads of charge were presented.

^aExpanded to include brokers' notes as new taxable instruments.

^bBrokers' notes were reclassified as a separate head of charge.

^cPreviously categorised under cognovit and arbitration awards reclassified as a separate head of charge.

^dPreviously categorised under bills of exchange reclassified as a separate head of charge.

^eExpanded to include bank cheques as new taxable instruments.

^fBank cheques were reclassified as a separate head of charge.

^gExpanded to include average statements as new taxable instruments.

^hPreviously categorised under agreements reclassified as a separate head of charge.

ⁱPreviously categorised under chartered parties reclassified as a separate head of charge.

^jRenamed as arbitration awards.

^kPreviously categorised under conveyance reclassified as a separate head of charge.

^lThe duty remained as the total of those due under leases at a premium and leases at a rent. The rule appeared as a note in the charging schedule annexed to the Stamp Ordinance.

^mExpanded to include general letters of hypothecation as new taxable instruments.

ⁿExpanded to include notes of protest for bill of exchange as new taxable instruments.

^oExpanded to include fire and life insurance policies as new taxable instruments.

^pExpanded to include proxies as new taxable instruments.

^qReclassified as taxable instruments under the head of charge of mortgages.

Appendix II: The summary of changes to Hong Kong stamp duty heads of charge from 1901 to 1920

Head of charge	1894 Stamp Amendment Ordinance (Final column from Appendix I)	1894 category	1901 Stamp Ordinance	1901 category	1902 Stamp Amendment Ordinance	1902 category	1909 Stamp Amendment Ordinance	1909 category	1911 Stamp Amendment Ordinance	1911 category
Adjudication fees	Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Head 1
Affidavits	Affidavits	No category	Affidavits	Head 2	Affidavits	Head 2	Affidavits	Head 2	Affidavits	Head 2
Affirmations	Not enacted	Not enacted	Affirmations ^a	Head 3	Affirmations	Head 3	Affirmations	Head 3	Affirmations	Head 3
Agreements	Agreements	Head 2	Agreements	Head 4	Agreements	Head 4	Agreements	Head 4	Agreements	Head 4
Arbitration awards	Arbitration awards	Head 3	Arbitration awards	Head 5	Arbitration awards	Head 5	Arbitration awards	Head 5	Arbitration awards	Head 5
Articles of clerkship	Articles of clerkship	Head 4	Articles of clerkship	Head 6	Articles of clerkship	Head 6	Articles of clerkship	Head 6	Articles of clerkship	Head 6
Assignments	Not enacted	Not enacted	Assignments ^b	Head 7	Assignments	Head 7	Assignments	Head 7	Assignments	Head 7
Attested copies	Attested copies	Head 5	Attested copies	Head 8	Attested copies	Head 8	Attested copies	Head 8	Attested copies	Head 8
Attorney – Letters or Powers of	Not enacted	Not enacted	Attorney – Letters or Powers of ^c	Head 9	Attorney – Letters or Powers of	Head 9	Attorney – Letters or Powers of	Head 9	Attorney – Letters or Powers of	Head 9
Average statements	Not enacted	Not enacted	Average statements ^d	Head 10	Average statements	Head 10	Average statements	Head 10	Average statements	Head 10
Bank cheques	Bank cheques	Head 6	Bank cheques	Head 11	Bank cheques	Head 11	Bank cheques	Head 11	Bank cheques	Head 11
Bank notes	Bank notes	Head 7	Bank notes	Head 12	Bank notes	Head 12	Bank notes	Head 12	Bank notes	Head 12
Bills of exchange and promissory notes	Bills of exchange and promissory notes	Head 8	Bills of exchange and promissory notes	Head 13	Bills of exchange and promissory notes	Head 13	Bills of exchange and promissory notes	Head 13	Bills of exchange and promissory notes	Head 13

Appendix II Cont'd 1

Head of charge	1894 Stamp Amendment Ordinance (Final column from Appendix I)	1894 category	1901 Stamp Ordinance	1901 category	1902 Stamp Amendment Ordinance	1902 category	1909 Stamp Amendment Ordinance	1909 category	1911 Stamp Amendment Ordinance	1911 category
Bills of lading	Bills of lading	Head 9	Bills of lading	Head 14	Bills of lading	Head 14	Bills of lading	Head 14	Bills of lading ^e	Head 14
Bonds concerning respondentia and bottomry	Bonds concerning respondentia and bottomry	Head 10	Bonds concerning respondentia and bottomry	Head 15	Bonds concerning respondentia and bottomry	Head 15	Bonds concerning respondentia and bottomry	Head 15	Bonds concerning respondentia and bottomry	Head 15
Broker's notes	Broker's notes	Head 11	Broker's notes	Head 16	Broker's notes	Head 16	Broker's notes	Head 16	Broker's notes	Head 16
Charter parties	Charter parties	Head 12	Charter parties	Head 17	Charter parties	Head 17	Charter parties	Head 17	Charter parties	Head 17
Copy Charter	Copy Charter	Head 13	Copy Charter	Head 18	Copy Charter	Head 18	Copy Charter	Head 18	Copy Charter	Head 18
Collateral securities	Not enacted	Not enacted	Collateral securities ^f	Head 19	Collateral securities	Head 19	Collateral securities	Head 19	Collateral securities	Head 19
Contract	Not enacted	Not enacted	Contracts ^g	Head 20	Contracts	Head 20	Contracts	Head 20	Contracts	Head 20
Conveyances	Conveyances	Head 14	Conveyances	Head 21	Conveyances	Head 21	Conveyances	Head 21	Conveyances	Head 21
Co-partnership deeds	Co-partnership deeds	Head 15	Co-partnership deeds	Head 22	Co-partnership deeds	Head 22	Co-partnership deeds	Head 22	Co-partnership deeds	Head 22
Declarations	Not enacted	Not enacted	Declarations ^h	Head 23	Declarations	Head 23	Declarations	Head 23	Declarations	Head 23
Declarations of trust	Declarations of trust	Head 16	Declarations of trust	Head 24	Declarations of trust	Head 24	Declarations of trust	Head 24	Declarations of trust	Head 24
Deeds of gift	Deeds of gift	Head 17	Deeds of gift	Head 25	Deeds of gift	Head 25	Deeds of gift	Head 25	Deeds of gift	Head 25
Deposits of title deed	Not enacted	Not enacted	Deposits of title deed ⁱ	Head 26	Deposits of title deed	Head 26	Deposits of title deed	Head 26	Deposits of title deed	Head 26
Duplicates or counterparts	Duplicates or counterparts	Head 18	Duplicates or counterparts	Head 27	Duplicates or counterparts	Head 27	Duplicates or counterparts	Head 27	Duplicates or counterparts	Head 27
Emigration fees	Emigration fees	Head 19	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed

Appendix II Cont'd 2

Head of charge	1894 Stamp Amendment Ordinance (Final column from Appendix I)	1894 category	1901 Stamp Ordinance	1901 category	1902 Stamp Amendment Ordinance	1902 category	1909 Stamp Amendment Ordinance	1909 category	1911 Stamp Amendment Ordinance	1911 category
Equitable charges	Not enacted	Not enacted	Equitable charges ^j	Head 28	Equitable charges	Head 28	Equitable charges	Head 28	Equitable charges	Head 28
Foreign attachment bonds	Foreign attachment bonds	Head 20	Foreign attachment bonds	Head 29	Foreign attachment bonds	Head 29	Foreign attachment bonds	Head 29	Foreign attachment bonds	Head 29
Guarantee	Not enacted	Not enacted	Guarantees ^k	Head 30	Guarantees	Head 30	Guarantees	Head 30	Guarantees	Head 30
Instruments under seal	Instruments under seal	Head 21	Instruments under seal	Head 31	Instruments under seal	Head 31	Instruments under seal	Head 31	Instruments under seal	Head 31
Leases at a premium	Leases at a premium	Head 22	Leases at a premium	Head 32	Leases at a premium	Head 32	Leases at a premium	Head 32	Leases at a premium	Head 32
Lease duplicates	Lease duplicates	Head 23	Lease duplicates	Head 33	Lease duplicates	Head 33	Lease duplicates	Head 33	Lease duplicates	Head 33
Leases at a rent	Leases at a rent	Head 24	Leases at a rent	Head 34	Leases at a rent	Head 34	Leases at a rent	Head 34	Leases at a rent	Head 34
Letters of hypothecation	Letters of hypothecation	Head 25	Letters of hypothecation	Head 35	Letters of hypothecation	Head 35	Letters of hypothecation	Head 35	Letters of hypothecation	Head 35
Letters for appointing proxies	Not enacted	Not enacted	Letters for appointing proxies ^l	Head 36	Letters for appointing proxies	Head 36	Letters for appointing proxies	Head 36	Letters for appointing proxies	Head 36
Letters of guarantee	Not enacted	Not enacted	Letters of guarantee ^m	Head 37	Letters of guarantee	Head 37	Letters of guarantee	Head 37	Letters of guarantee	Head 37
Mortgages	Mortgages	Head 26	Mortgages	Head 38	Mortgages	Head 38	Mortgages	Head 38	Mortgages	Head 38
Notarial acts	Notarial acts	Head 27	Notarial acts	Head 39	Notarial acts	Head 39	Notarial acts	Head 39	Notarial acts	Head 39

Appendix II Cont'd 3

Head of charge	1894 Stamp Amendment Ordinance (Final column from Appendix I)	1894 category	1901 Stamp Ordinance	1901 category	1902 Stamp Amendment Ordinance	1902 category	1909 Stamp Amendment Ordinance	1909 category	1911 Stamp Amendment Ordinance	1911 category
Policies of insurance	Policies of insurance	Head 29	Policies of insurance	Head 41	Policies of insurance	Head 41	Policies of insurance	Head 41	Policies of insurance ⁿ	Head 41
Powers of Attorney	Powers of Attorney ^o	Head 30	Powers of Attorney	Head 42	Powers of Attorney	Head 42	Powers of Attorney	Head 42	Powers of Attorney	Head 42
Probates and letters of administration	Probates and letters of administration	Head 31	Probates and letters of administration	Head 43	Probates and letters of administration	Head 43	Probates and letters of administration	Head 43	Probates and letters of administration	Head 43
Re-assignments of mortgaged property	Repealed	Repealed	Re-assignments of mortgaged property ^p	Head 44	Re-assignments of mortgaged property	Head 44	Re-assignments of mortgaged property	Head 44	Re-assignments of mortgaged property	Head 44
Receipts	Receipts	Head 32	Receipts	Head 45	Receipts	Head 45	Receipts	Head 45	Receipts	Head 45
Servant security bonds	Servant security bonds	Head 33	Servant security bonds	Head 46	Servant security bonds	Head 46	Servant security bonds	Head 46	Servant security bonds	Head 46
Settlements	Settlements	Head 34	Settlements	Head 47	Settlements	Head 47	Settlements	Head 47	Settlements	Head 47
Settlements executed in pursuance of a duly stamped agreement	Not enacted	Not enacted	Settlements executed in pursuance of a duly stamped agreement	Head 48	Settlements executed in pursuance of a duly stamped agreement	Head 48	Settlements executed in pursuance of a duly stamped agreement	Head 48	Settlements executed in pursuance of a duly stamped agreement	Head 48
Statutory declarations	Not enacted	Not enacted	Statutory declarations ^q	Head 49	Statutory declarations	Head 49	Statutory declarations	Head 49	Statutory declarations	Head 49
Surrenders of a lease	Surrenders of a lease	No category	Surrenders of a lease	Head 50	Surrenders of a lease	Head 50	Surrenders of a lease	Head 50	Surrenders of a lease	Head 50
Transfers of shares in any public company	Transfers of shares in any public company	Head 35	Transfers of shares in any public company	Head 51	Transfers of shares in any public company	Head 51	Transfers of shares in any public company	Head 51	Transfers of shares in any public company	Head 51

Appendix II Cont'd 4

Head of charge	1894 Stamp Amendment Ordinance (Final column from Appendix I)	1894 category	1901 Stamp Ordinance	1901 category	1902 Stamp Amendment Ordinance	1902 category	1909 Stamp Amendment Ordinance	1909 category	1911 Stamp Amendment Ordinance	1911 category
Share warrants to bearer	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Share warrants to bearer	Head 52

Note: Each head of charge might contain one or more taxable instrument(s). Only those Ordinances that effected changes to the heads of charge were presented.

^aThey have similar meaning as affidavits.

^bPreviously categorised under mortgages reclassified as a separate head of charge.

^cThey have the same meaning as powers of attorney.

^dPreviously categorised under bonds reclassified as a separate head of charge.

^eExpanded to include accountable receipts as new taxable instruments.

^fAdded in to highlight instruments that were already taxable under mortgages.

^gThey have the same meaning as agreements.

^hThey have the same meaning as affidavits.

ⁱPreviously categorised under mortgages reclassified as a separate head of charge.

^jPreviously categorised under mortgages reclassified as a separate head of charge.

^kPreviously categorised under agreements reclassified as a separate head of charge.

^lPreviously categorised under powers of attorney reclassified as a separate head of charge.

^mPreviously categorised under agreements reclassified as a separate head of charge.

ⁿExpanded to include proxies as new chargeable instruments.

^oExpanded to include floating insurance policies as new chargeable instruments.

^pPreviously categorised under mortgages reclassified as a separate head of charge.

^qThey have similar meaning as affidavits.

Appendix III: The summary of changes to Hong Kong stamp duty heads of charge from 1920 to 1945

Head of charge	1911 Stamp Amendment Ordinance (Final column from Appendix II)	1911 category	1921 Stamp Ordinance	1921 category	1921 Stamp Amendment Ordinance	1921 category	1922 Stamp Amendment Ordinance	1922 category	1929 Stamp Amendment Ordinance	1929 category	1935 Stamp Amendment Ordinance	1935 category
Adjudication fees	Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Head 1
Affidavits	Affidavits	Head 2	Affidavits ^a	Head 2	Affidavits	Head 2	Affidavits	Head 2	Affidavits	Head 2	Affidavits	Head 2
Affirmations	Affirmations	Head 3	Repealed ^b	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Agreements	Agreements	Head 4	Agreements ^c	Head 3	Agreements	Head 3	Agreements	Head 3	Agreements	Head 3	Agreements	Head 3
Agreements of service with a corporate body	Not enacted	Not enacted	Agreements of service with a corporate body	Head 4	Agreements of service with a corporate body	Head 4	Agreements of service with a corporate body	Head 4	Agreements of service with a corporate body	Head 4	Agreements of service with a corporate body	Head 4
Appointments of a new trustee	Not enacted	Not enacted	Appointments of a new trustee	Head 5	Appointments of a new trustee	Head 5	Appointments of a new trustee	Head 5	Appointments of a new trustee	Head 5	Appointments of a new trustee	Head 5
Apprentice-ships	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Apprentice-ships	Head 5A	Apprentice-ships	Head 5A
Arbitration awards	Arbitration awards	Head 5	Repealed ^d	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Articles of clerkship	Articles of clerkship	Head 6	Articles of clerkship	Head 6	Articles of clerkship	Head 6	Articles of clerkship	Head 6	Articles of clerkship	Head 6	Articles of clerkship	Head 6
Assignments	Assignments	Head 7	Assignments ^e	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Attested copies	Attested copies	Head 8	Attested copies	Head 7	Attested copies	Head 7	Attested copies	Head 7	Attested copies	Head 7	Attested copies	Head 7
Awards	Not enacted	Not enacted	Awards ^f	Head 8	Awards	Head 8	Awards	Head 8	Awards	Head 8	Awards	Head 8
Attorney – Letter or Powers of	Attorney – Letter or Powers of	Head 9	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Average statements	Average statements	Head 10	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Bank cheques	Bank cheques	Head 11	Repealed ^g	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed

Appendix III Cont'd 1

Head of charge	1911 Stamp Amendment Ordinance (Final column from Appendix II)	1911 category	1921 Stamp Ordinance	1921 category	1921 Stamp Amendment Ordinance	1921 category	1922 Stamp Amendment Ordinance	1922 category	1929 Stamp Amendment Ordinance	1929 category	1935 Stamp Amendment Ordinance	1935 category
Bank notes	Bank notes	Head 12	Bank notes	Head 9	Bank notes	Head 9	Bank notes	Head 9	Bank notes	Head 9	Bank notes	Head 9
Bills of exchange and promissory notes	Bills of exchange and promissory notes	Head 13	Bills of exchange and promissory notes ^h	Head 10	Bills of exchange and promissory notes	Head 10	Bills of exchange and promissory notes	Head 10	Bills of exchange and promissory notes	Head 10	Bills of exchange and promissory notes	Head 10
Bills of lading	Bills of lading ⁱ	Head 14	Bills of lading	Head 11	Bills of lading	Head 11	Bills of lading	Head 11	Bills of lading	Head 11	Bills of lading	Head 11
Bonds concerning respondentia and bottomry	Bonds concerning respondentia and bottomry	Head 15	Bonds concerning respondentia and bottomry	Head 12	Bonds concerning respondentia and bottomry	Head 12	Bonds concerning respondentia and bottomry	Head 12	Bonds concerning respondentia and bottomry	Head 12	Bonds concerning respondentia and bottomry	Head 12
Bonds	Not enacted	Not enacted	Not enacted	Not enacted	Bonds	Head 12A	Bonds	Head 12A	Bonds	Head 12A	Bonds	Head 12A
Broker's notes	Broker's notes	Head 16	Repealed ^j	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Certificates to practise	Not enacted	Not enacted	Certificates to practise	Head 13	Certificates to practise	Head 13	Certificates to practise	Head 13	Certificates to practise	Head 13	Certificates to practise	Head 13
Charter parties	Charter parties	Head 17	Charter parties	Head 14	Charter parties	Head 14	Charter parties	Head 14	Charter parties	Head 14	Charter parties	Head 14
Copy Charter	Copy Charter	Head 18	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Collateral securities	Collateral securities	Head 19	Repealed ^k	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Compradore orders	Not enacted	Not enacted	Not enacted	Not enacted	Compradore orders	Head 14A	Compradore orders	Head 14A	Compradore orders	Head 14A	Compradore orders	Head 14A
Cashier orders	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Cashier orders	Head 14B
Contracts	Contracts	Head 20	Repealed ^j	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Conveyances	Conveyances	Head 21	Conveyances	Head 15	Conveyances	Head 15	Conveyances	Head 15	Conveyances	Head 15	Conveyances	Head 15
Conveyances of any kind not specially described	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Conveyances of any kind not specially described	Head 15A	Conveyances of any kind not specially described	Head 15A	Conveyances of any kind not specially described	Head 15A

Appendix III Cont'd 2

Head of charge	1911 Stamp Amendment Ordinance (Final column from Appendix II)	1911 category	1921 Stamp Ordinance	1921 category	1921 Stamp Amendment Ordinance	1921 category	1922 Stamp Amendment Ordinance	1922 category	1929 Stamp Amendment Ordinance	1929 category	1935 Stamp Amendment Ordinance	1935 category
Co-partnership deeds	Co-partnership deeds	Head 22	Repealed ^m	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Declaration	Declaration	Head 23	Repealed ⁿ	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Declarations of trust	Declarations of trust	Head 24	Repealed ^o	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Declarations or revocations of trust	Not enacted	Not enacted	Declarations or revocations of trust	Head 16	Declarations or revocations of trust	Head 16	Declarations or revocations of trust	Head 16	Declarations or revocations of trust	Head 16	Declarations or revocations of trust	Head 16
Deeds	Not enacted	Not enacted	Deeds	Head 17	Deeds	Head 17	Deeds	Head 17	Deeds	Head 17	Deeds	Head 17
Deeds of gift	Deeds of gift	Head 25	Deeds of gift ^p	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Deposits of title deed	Deposits of title deed	Head 26	Repealed ^q	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Dividend warrants	Not enacted	Not enacted	Dividend warrants	Head 17A	Dividend warrants	Head 17A	Dividend warrants	Head 17A	Dividend warrants	Head 17A	Dividend warrants	Head 17A
Duplicates or counterparts	Duplicates or counterparts	Head 27	Duplicates or counterparts	Head 18	Duplicates or counterparts	Head 18	Duplicates or counterparts	Head 18	Duplicates or counterparts	Head 18	Duplicates or counterparts	Head 18
Equitable charges	Equitable charges	Head 28	Repealed ^r	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Exchanges	Not enacted	Not enacted	Exchanges	Head 19	Exchanges	Head 19	Exchanges	Head 19	Exchanges	Head 19	Exchanges	Head 19
Exchange contract cancellation notes	Not enacted	Not enacted	Exchange contract cancellation notes	Head 20	Exchange contract cancellation notes	Head 20	Exchange contract cancellation notes	Head 20	Exchange contract cancellation notes	Head 20	Exchange contract cancellation notes	Head 20
Foreclosure orders	Not enacted	Not enacted	Foreclosure orders	Head 21	Foreclosure orders	Head 21	Foreclosure orders	Head 21	Foreclosure orders	Head 21	Foreclosure orders	Head 21
Foreign attachment bonds	Foreign attachment bonds	Head 29	Foreign attachment bonds	Head 22	Foreign attachment bonds	Head 22	Foreign attachment bonds	Head 22	Foreign attachment bonds	Head 22	Foreign attachment bonds	Head 22

Appendix III Cont'd 3

Head of charge	1911 Stamp Amendment Ordinance (Final column from Appendix II)	1911 category	1921 Stamp Ordinance	1921 category	1921 Stamp Amendment Ordinance	1921 category	1922 Stamp Amendment Ordinance	1922 category	1929 Stamp Amendment Ordinance	1929 category	1935 Stamp Amendment Ordinance	1935 category
Godown warrants	Not enacted	Not enacted	Godown warrants	Head 23	Godown warrants	Head 23	Godown warrants	Head 23	Godown warrants	Head 23	Godown warrants	Head 23
Guarantees	Guarantees	Head 30	Repealed ^s	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Instruments under seal	Instruments under seal	Head 31	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Leases	Not enacted	Not enacted	Leases ^t	Head 24	Leases	Head 24	Leases	Head 24	Leases	Head 24	Leases	Head 24
Leases at a premium	Leases at a premium	Head 32	Repealed ^u	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Lease duplicates	Lease duplicates	Head 33	Repealed ^v	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Leases at a rent	Leases at a rent	Head 34	Repealed ^x	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Letters of allotment	Not enacted	Not enacted	Letters of allotment	Head 25	Letters of allotment	Head 25	Letters of allotment	Head 25	Letters of allotment	Head 25	Letters of allotment	Head 25
Letters for appointing proxies	Letters for appointing proxies	Head 36	Repealed ^y	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Letters of hypothecation	Letters of hypothecation	Head 35	Letters of hypothecation	Head 26	Letters of hypothecation	Head 26	Letters of hypothecation	Head 26	Letters of hypothecation	Head 26	Letters of hypothecation	Head 26
Letters patent	Not enacted	Not enacted	Letters patent ^z	Head 27	Letters patent	Head 27	Letters patent	Head 27	Letters patent	Head 27	Letters patent	Head 27
Letters of guarantee	Letters of guarantee	Head 37	Repealed ^{aa}	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Marketable securities issued in the colony	Not enacted	Not enacted	Marketable securities issued in the colony	Head 28	Marketable securities issued in the colony	Head 28	Marketable securities issued in the colony	Head 28	Marketable securities issued in the colony	Head 28	Marketable securities issued in the colony	Head 28
Mortgages	Mortgages	Head 38	Mortgages	Head 29	Mortgages	Head 29	Mortgages	Head 29	Mortgages	Head 29	Mortgages	Head 29
Notarial acts	Notarial acts	Head 39	Notarial acts	Head 30	Notarial acts	Head 30	Notarial acts	Head 30	Notarial acts	Head 30	Notarial acts	Head 30

Appendix III Cont'd 4

Head of charge	1911 Stamp Amendment Ordinance (Final column from Appendix II)	1911 category	1921 Stamp Ordinance	1921 category	1921 Stamp Amendment Ordinance	1921 category	1922 Stamp Amendment Ordinance	1922 category	1929 Stamp Amendment Ordinance	1929 category	1935 Stamp Amendment Ordinance	1935 category
Notes of protest	Notes of protest	Head 40	Repealed ^{bb}	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Notes of protest of a bill of exchange	Not enacted	Not enacted	Notes of protest of a bill of exchange ^{cc}	Head 31	Notes of protest of a bill of exchange	Head 31	Notes of protest of a bill of exchange	Head 31	Notes of protest of a bill of exchange	Head 31	Notes of protest of a bill of exchange	Head 31
Partnership instruments	Not enacted	Not enacted	Partnership instruments	Head 32	Partnership instruments	Head 32	Partnership instruments	Head 32	Partnership instruments	Head 32	Partnership instruments	Head 32
Policies of insurance	Policies of insurance	Head 41	Policies of insurance	Head 33	Policies of insurance	Head 33	Policies of insurance	Head 33	Policies of insurance	Head 33	Policies of insurance	Head 33
Powers of Attorney	Powers of Attorney	Head 42	Powers of Attorney ^{dd}	Head 34	Powers of Attorney	Head 34	Powers of Attorney	Head 34	Powers of Attorney	Head 34	Powers of Attorney	Head 34
Probates and letters of administration	Probates and letters of administration	Head 43	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Re-assignments of mortgaged property	Re-assignments of mortgaged property	Head 44	Repealed ^{ee}	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Protests by a master of a vessel	Not enacted	Not enacted	Protests by a master of a vessel ^{ff}	Head 35	Protests by a master of a vessel	Head 35	Protests by a master of a vessel	Head 35	Protests by a master of a vessel	Head 35	Protests by a master of a vessel	Head 35
Receipts	Receipts	Head 45	Receipts	Head 36	Receipts	Head 36	Receipts	Head 36	Receipts	Head 36	Receipts	Head 36
Servant security bonds	Servant security bonds	Head 46	Servant security bonds	Head 37	Servant security bonds	Head 37	Servant security bonds	Head 37	Servant security bonds	Head 37	Servant security bonds	Head 37
Settlements	Settlements	Head 47	Settlements	Head 38	Settlements	Head 38	Settlements	Head 38	Settlements	Head 38	Settlements	Head 38
Settlements executed in pursuance of a duly stamped agreement	Settlements executed in pursuance of a duly stamped agreement	Head 48	Settlements executed in pursuance of a duly stamped agreement	Head 39	Settlements executed in pursuance of a duly stamped agreement	Head 39	Settlements executed in pursuance of a duly stamped agreement	Head 39	Settlements executed in pursuance of a duly stamped agreement	Head 39	Settlements executed in pursuance of a duly stamped agreement	Head 39

Head of charge	1911 Stamp Amendment Ordinance (Final column from Appendix II)	1911 category	1921 Stamp Ordinance	1921 category	1921 Stamp Amendment Ordinance	1921 category	1922 Stamp Amendment Ordinance	1922 category	1929 Stamp Amendment Ordinance	1929 category	1935 Stamp Amendment Ordinance	1935 category
Shares	Not enacted	Not enacted	Shares ^{gg}	Head 40	Shares	Head 40	Shares	Head 40	Shares	Head 40	Shares	Head 40
Shippers book	Not enacted	Not enacted	Shippers book ^{hh}	Head 41	Shippers book	Head 41	Shippers book	Head 41	Shippers book	Head 41	Shippers book	Head 41
Statutory declaration	Statutory declaration	Head 49	Statutory declaration ⁱⁱ	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Surrenders of a lease	Surrenders of a lease	Head 50	Surrenders of a lease ^{jj}	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Transfers of shares in any public company	Transfers of shares in any public company	Head 51	Transfers of shares in any public company ^{kk}	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Share warrants to bearer	Share warrants to bearer	Head 52	Share warrants to bearer ^{ll}	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Telegraphic transfer advices	Not enacted	Not enacted	Telegraphic transfer advices	Head 42	Telegraphic transfer advices	Head 42	Telegraphic transfer advices	Head 42	Telegraphic transfer advices	Head 42	Telegraphic transfer advices	Head 42
Trademarks	Not enacted	Not enacted	Trademarks ^{mm}	Head 43	Trademarks	Head 43	Trademarks	Head 43	Trademarks	Head 43	Trademarks	Head 43
Vesting orders	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Vesting orders	Head 43A	Vesting orders	Head 43A	Vesting orders	Head 43A
Voluntary dispositions <i>inter vivos</i> of property	Not enacted	Not enacted	Voluntary dispositions <i>inter vivos</i> of property ⁿⁿ	Head 44	Voluntary dispositions <i>inter vivos</i> of property	Head 44	Voluntary dispositions <i>inter vivos</i> of property	Head 44	Voluntary dispositions <i>inter vivos</i> of property	Head 44	Voluntary dispositions <i>inter vivos</i> of property	Head 44

Note: Each head of charge might contain one or more taxable instrument(s). Only those Ordinances that effected changes to the heads of charge were presented.

^aExpanded to include the previous heads of charge of affirmations and declarations.

^bReclassified under the head of charge of affidavits.

^cExpanded to include the previous heads of charge of guarantees and letters of guarantee.

^dRenamed as awards.

^eReclassified under the heads of charge of conveyances, letters patent, mortgages and trademarks.

^fArbitration awards renamed as awards.

^gReclassified under the heads of charge of bills of exchange and promissory notes.

^hExpanded to include the previous head of charge of bank cheques. Also expanded to include traveller's cheques, circular notes, letters of credit.

ⁱExpanded to include accountable receipts as new chargeable instruments.

- ^kReclassified under the head of charge of mortgages.
- ^lReclassified under the head of charge of agreements.
- ^mReclassified under the head of charge of partnership instruments.
- ⁿReclassified under the head of charge of affidavits.
- ^oRenamed as declarations or revocations of trust.
- ^pRenamed as deeds.
- ^qReclassified under the head of charge of mortgages.
- ^rReclassified under the head of charge of mortgages.
- ^sReclassified under the head of charge of agreements.
- ^tExpanded to include to previous heads of charge of leases at a premium, leases at a rent and leases at a premium and rent as well as lease duplicates.
- ^uReclassified under the head of charge of leases.
- ^vReclassified under the head of charge of leases.
- ^wReclassified under the head of charge of leases.
- ^yReclassified under the head of charge of powers of attorney.
- ^zPreviously categorised under assignments reclassified as a separate head of charge.
- ^{aa}Reclassified under the head of charge of agreements.
- ^{bb}Separated into the heads of charges of notes of protest of a bill of exchange and protests by a master of a vessel.
- ^{cc}Previously categorised under notes of protest reclassified as a separate head of charge.
- ^{dd}Expanded to include the previous head of charge of letters for appointing proxies.
- ^{ee}Reclassified under the head of charge of mortgages.
- ^{ff}Previously categorised under notes of protest reclassified as a separate head of charge.
- ^{gg}Included therein was the new chargeable instrument of share contract notes.
- ^{hh}Chinese version of bills of lading.
- ⁱⁱReclassified under the head of charge of affidavits.
- ^{jj}Reclassified under the head of charge of lease.
- ^{kk}Reclassified under the head of charge of shares.
- ^{ll}Reclassified under the head of charge of shares.
- ^{mm}Previously categorised under assignments reclassified as a separate head of charge.
- ⁿⁿPreviously categorised under conveyances reclassified as a separate head of charge.

Appendix IV: The summary of changes to Hong Kong stamp duty heads of charge from 1946 to 1970

Head of charge	1935 Stamp Amendment Ordinance (Final column from Appendix III)	1935 category	1949 Stamp Amendment Ordinance	1949 category	1950 Law Revision Ordinances	1950 category	1961 Stamp Amendment Ordinance	1961 category	1968 Stamp Amendment Ordinance	1968 category
Adjudication fees	Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Head 1
Affidavits	Affidavits	Head 2	Affidavits	Head 2	Affidavits	Head 2	Affidavits	Head 2	Affidavits	Head 2
Agreements	Agreements	Head 3	Agreements	Head 3	Agreements	Head 3	Agreements	Head 3	Agreements	Head 3
Agreements for hire purchase	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Agreements for hire purchase	Head 4	Agreements for hire purchase	Head 4
Agreements for sale of any equitable interest in any property	Not enacted	Not enacted	Not enacted	Not enacted	Agreements for sale of any equitable interest in ant property	Head 4	Agreements for sale of any equitable interest in ant property	Head 5	Agreements for sale of any equitable interest in ant property	Head 5
Agreements for sale of interest in any property	Not enacted	Not enacted	Not enacted	Not enacted	Agreements for sale of interest in any property	Head 5	Agreements for sale of interest in any property	Head 6	Agreements for sale of interest in any property	Head 6
Agreements of service with a corporate body	Agreements of service with a corporate body	Head 4	Agreements of service with a corporate body	Head 4	Agreements of service with a corporate body	Head 6	Agreements of service with a corporate body	Head 7	Agreements of service with a corporate body	Head 7
Appointments of a new trustee	Appointments of a new trustee	Head 5	Appointments of a new trustee	Head 5	Appointments of a new trustee	Head 7	Appointments of a new trustee	Head 8	Appointments of a new trustee	Head 8
Apprenticeships	Apprenticeships	Head 5A	Apprenticeships	Head 5A	Apprenticeships	Head 8	Repealed	Repealed	Repealed	Repealed
Articles of clerkship	Articles of clerkship	Head 6	Articles of clerkship	Head 6	Articles of clerkship	Head 9	Repealed	Repealed	Repealed	Repealed
Attested copies	Attested copies	Head 7	Attested copies	Head 7	Attested copies	Head 10	Attested copies	Head 9	Attested copies	Head 9
Awards	Awards	Head 8	Awards	Head 8	Awards	Head 11	Repealed	Repealed	Repealed	Repealed
Bank notes	Bank notes	Head 9	Bank notes	Head 9	Bank notes	Head 12	Bank notes	Head 10	Bank notes	Head 10
Bills of exchange and promissory notes	Bills of exchange and promissory notes	Head 10	Bills of exchange and promissory notes	Head 10	Bills of exchange and promissory notes	Head 13	Bills of exchange and promissory notes	Head 11	Bills of exchange and promissory notes	Head 11

Appendix IV Cont'd 1

Head of charge	1935 Stamp Amendment Ordinance (Final column from Appendix III)	1935 category	1949 Stamp Amendment Ordinance	1949 category	1950 Law Revision Ordinances	1950 category	1961 Stamp Amendment Ordinance	1961 category	1968 Stamp Amendment Ordinance	1968 category
Bills of lading	Bills of lading	Head 11	Bills of lading	Head 11	Bills of lading	Head 14	Bills of lading	Head 12	Bills of lading	Head 12
Bonds concerning respondentia and bottomry	Bonds concerning respondentia and bottomry	Head 12	Bonds concerning respondentia and bottomry	Head 12	Bonds concerning respondentia and bottomry	Head 15	Bonds concerning respondentia and bottomry	Head 13	Bonds concerning respondentia and bottomry	Head 13
Bonds	Bonds	Head 12A	Bonds	Head 12A	Bonds	Head 16	Bonds	Head 14	Bonds	Head 14
Certificates to practise	Certificates to practise	Head 13	Certificates to practise	Head 13	Certificates to practise	Head 17	Certificates to practise	Head 15	Certificates to practise	Head 15
Charter parties	Charter parties	Head 14	Charter parties	Head 14	Charter parties	Head 18	Charter parties	Head 16	Charter parties	Head 16
Compradore orders	Compradore orders	Head 14A	Compradore orders	Head 14A	Compradore orders	Head 19	Compradore orders	Head 17	Compradore orders	Head 17
Cashier orders	Cashier orders	Head 14B	Cashier orders	Head 14B	Cashier orders	Head 20	Cashier orders	Head 18	Cashier orders	Head 18
Contract notes	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Contract notes	Head 18A
Conveyances	Conveyances	Head 15	Conveyances	Head 15	Conveyances	Head 21	Conveyances	Head 19	Conveyances	Head 19
Conveyances made for the purpose of effectuating the appointment of a new trustee	Not enacted	Not enacted	Not enacted	Not enacted	Conveyances made for the purpose of effectuating the appointment of a new trustee	Head 22	Conveyances made for the purpose of effectuating the appointment of a new trustee	Head 20	Conveyances made for the purpose of effectuating the appointment of a new trustee	Head 20
Conveyances of any kind not specially described	Conveyances of any kind not specially described	Head 15A	Conveyances of any kind not specially described	Head 15A	Conveyances of any kind not specially described	Head 23	Conveyances of any kind not specially described	Head 21	Conveyances of any kind not specially described	Head 21

Appendix IV Cont'd 2

Head of charge	1935 Stamp Amendment Ordinance (Final column from Appendix III)	1935 category	1949 Stamp Amendment Ordinance	1949 category	1950 Law Revision Ordinances	1950 category	1961 Stamp Amendment Ordinance	1961 category	1968 Stamp Amendment Ordinance	1968 category
Declarations or revocations of trust	Declarations or revocations of trust	Head 16	Declarations or revocations of trust	Head 16	Declarations or revocations of trust	Head 24	Declarations or revocations of trust	Head 22	Declarations or revocations of trust	Head 22
Deeds	Deeds	Head 17	Deeds	Head 17	Deeds	Head 25	Deeds	Head 23	Deeds	Head 23
Dividend warrants	Dividend warrants	Head 17A	Dividend warrants	Head 17A	Dividend warrants	Head 26	Dividend warrants	Head 24	Dividend warrants	Head 24
Duplicates or counterparts	Duplicates or counterparts	Head 18	Duplicates or counterparts	Head 18	Duplicates or counterparts	Head 27	Duplicates or counterparts	Head 25	Duplicates or counterparts	Head 25
Exchanges	Exchanges	Head 19	Exchanges	Head 19	Exchanges	Head 28	Exchanges	Head 26	Exchanges	Head 26
Exchange contract cancellation notes	Exchange contract cancellation notes	Head 20	Exchange contract cancellation notes	Head 20	Exchange contract cancellation notes	Head 29	Exchange contract cancellation notes	Head 27	Exchange contract cancellation notes	Head 27
Foreclosure orders	Foreclosure orders	Head 21	Foreclosure orders	Head 21	Foreclosure orders	Head 30	Foreclosure orders	Head 28	Foreclosure orders	Head 28
Foreign attachment bonds	Foreign attachment bonds	Head 22	Foreign attachment bonds	Head 22	Foreign attachment bonds	Head 31	Foreign attachment bonds	Head 29	Foreign attachment bonds	Head 29
Godown warrants	Godown warrants	Head 23	Godown warrants	Head 23	Godown warrants	Head 32	Godown warrants	Head 30	Godown warrants	Head 30
Import or export declarations	Not enacted	Not enacted	Not enacted	Not enacted	Import or Export Declarations	Head 33	Import or Export Declarations	Head 31	Import or Export Declarations	Head 31
Leases	Leases	Head 24	Leases	Head 24	Leases	Head 34	Leases	Head 32	Leases	Head 32
Letters of allotment	Letters of allotment	Head 25	Letters of allotment	Head 25	Letters of allotment	Head 35	Letters of allotment	Head 33	Letters of allotment	Head 33
Letters of hypothecation	Letters of hypothecation	Head 26	Letters of hypothecation	Head 26	Letters of hypothecation	Head 36	Letters of hypothecation	Head 34	Letters of hypothecation	Head 34

Appendix IV Cont'd 3

Head of charge	1935 Stamp Amendment Ordinance (Final column from Appendix III)	1935 category	1949 Stamp Amendment Ordinance	1949 category	1950 Law Revision Ordinances	1950 category	1961 Stamp Amendment Ordinance	1961 category	1968 Stamp Amendment Ordinance	1968 category
Letters patent	Letters patent	Head 27	Letters patent	Head 27	Letters patent	Head 37	Letters patent	Head 35	Letters patent	Head 35
Marketable securities issued in the colony	Marketable securities issued in the colony	Head 28	Marketable securities issued in the colony	Head 28	Marketable securities issued in the colony	Head 38	Marketable securities issued in the colony	Head 36	Marketable securities issued in the colony	Head 36
Mortgages	Mortgages	Head 29	Mortgages	Head 29	Mortgages	Head 39	Mortgages	Head 37	Mortgages	Head 37
Notarial acts	Notarial acts	Head 30	Notarial acts	Head 30	Notarial acts	Head 40	Notarial acts	Head 38	Notarial acts	Head 38
Notes of protest of a bill of exchange	Notes of protest of a bill of exchange	Head 31	Notes of protest of a bill of exchange	Head 31	Notes of protest of a bill of exchange	Head 41	Notes of protest of a bill of exchange	Head 39	Notes of protest of a bill of exchange	Head 39
Partition deeds	Not enacted	Not enacted	Not enacted	Not enacted	Partition deeds	Head 42	Partition deeds	Head 40	Partition deeds	Head 40
Partnership instruments	Partnership instruments	Head 32	Partnership instruments	Head 32	Partnership instruments	Head 43	Partnership instruments	Head 41	Partnership instruments	Head 41
Policies of insurance	Policies of insurance	Head 33	Policies of insurance	Head 33	Policies of insurance	Head 44	Policies of insurance	Head 42	Policies of insurance	Head 42
Powers of attorney	Powers of attorney	Head 34	Powers of attorney	Head 34	Repealed ^a	Repealed	Repealed	Repealed	Repealed	Repealed
Powers of attorney for appointing proxies	Not enacted	Not enacted	Not enacted	Not enacted	Powers of attorney for appointing proxies	Head 45	Repealed ^b	Repealed	Repealed	Repealed
Powers of attorney for any other purposes	Not enacted	Not enacted	Not enacted	Not enacted	Powers of attorney for any other purposes	Head 46	Repealed ^c	Repealed	Repealed	Repealed
Powers of attorney for any purpose	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Powers of attorney for any purpose	Head 43	Powers of attorney for any purpose	Head 43

Appendix IV Cont'd 4

Head of charge	1935 Stamp Amendment Ordinance (Final column from Appendix III)	1935 category	1949 Stamp Amendment Ordinance	1949 category	1950 Law Revision Ordinances	1950 category	1961 Stamp Amendment Ordinance	1961 category	1968 Stamp Amendment Ordinance	1968 category
Protests by a master of a vessel	Protests by a master of a vessel	Head 35	Protests by a master of a vessel	Head 35	Protests by a master of a vessel	Head 47	Repealed	Repealed	Repealed	Repealed
Receipts	Receipts	Head 36	Receipts	Head 36	Receipts	Head 48	Receipts	Head 44	Receipts	Head 44
Servant security bonds	Servant security bonds	Head 37	Servant security bonds	Head 37	Servant security bonds	Head 49	Servant security bonds	Head 45	Servant security bonds	Head 45
Settlements executed in pursuance of a duly stamped agreement	Settlements executed in pursuance of a duly stamped agreement	Head 38 Head 39	Settlements executed in pursuance of a duly stamped agreement	Head 38 Head 39	Settlements executed in pursuance of a duly stamped agreement	Head 50 Head 51	Settlements executed in pursuance of a duly stamped agreement	Head 46 Head 47	Settlements executed in pursuance of a duly stamped agreement	Head 46 Head 47
Shares	Shares	Head 40	Shares	Head 40	Shares	Head 52	Shares	Head 48	Shares	Head 48
Shipper books	Shipper books	Head 41	Shipper books	Head 41	Shipper books	Head 53	Shipper books	Head 49	Shipper books	Head 49
Telegraphic transfer advices	Telegraphic transfer advices	Head 42	Telegraphic transfer advices	Head 42	Telegraphic transfer advices	Head 54	Telegraphic transfer advices	Head 50	Telegraphic transfer advices	Head 50
Trademarks	Trademarks	Head 43	Trademarks	Head 43	Trademarks	Head 55	Trademarks	Head 51	Trademarks	Head 51
Vesting orders	Vesting orders	Head 43A	Vesting orders	Head 43A	Vesting orders	Head 56	Vesting orders	Head 52	Vesting orders	Head 52
Voluntary dispositions <i>inter vivos</i> of property	Voluntary dispositions <i>inter vivos</i> of property	Head 44	Voluntary dispositions <i>inter vivos</i> of property	Head 44	Voluntary dispositions <i>inter vivos</i> of property	Head 57	Voluntary dispositions <i>inter vivos</i> of property	Head 53	Voluntary dispositions <i>inter vivos</i> of property	Head 53
Import declaration	Not enacted	Not enacted	Import declaration	Head 45	Repealed ^d	Repealed	Repealed	Repealed	Repealed	Repealed
Export declaration	Not enacted	Not enacted	Export declaration	Head 46	Repealed ^e	Repealed	Repealed	Repealed	Repealed	Repealed

Note: Each head of charge might contain one or more taxable instrument(s). Only those Ordinances that effected changes to the heads of charge were presented.

^aReclassified under the head of charge of powers of attorney for any other purpose.

Appendix IV Cont'd 4

^bReclassified under the head of charge of powers of attorney for any purpose.
^cReclassified under the head of charge of powers of attorney for any purpose.
^dReclassified under the head of charge of import or export declarations.
^eReclassified under the head of charge of import or export declarations.

Appendix V: The summary of changes to Hong Kong stamp duty heads of charge from 1971 to 1997

Head of charge	1968 Stamp Amendment Ordinance (Final column from Appendix IV)	1968 category	1973 Stamp Amendment Ordinance	1973 category	1977 Stamp Amendment Ordinance	1977 category	1978 Stamp Amendment Ordinance	1978 category	1981 Stamp Ordinance	1981 category
Adjudication fees	Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Head 1	Adjudication fees	Specified within the 1981 Stamp Ordinance and not classified as head of charge under the schedule annexed to the Ordinance
Affidavits	Affidavits	Head 2	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Agreements	Agreements	Head 3	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Agreements for hire purchase	Agreements for hire purchase	Head 4	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Agreements for sale of any equitable interest in any property	Agreements for sale of any equitable interest in any property	Head 5	Agreements for sale of any equitable interest in any property	Head 5	Agreements for sale of any equitable interest in any property	Head 5	Agreements for sale of any equitable interest in any property	Head 5	Repealed	Repealed
Agreements for sale of interest in any property	Agreements for sale of interest in any property	Head 6	Agreements for sale of interest in any property	Head 6	Agreements for sale of interest in any property	Head 6	Repealed	Repealed	Repealed	Repealed
Agreements of service with a corporate body	Agreements of service with a corporate body	Head 7	Agreements of service with a corporate body	Head 7	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Appointments of a new trustee	Appointments of a new trustee	Head 8	Appointments of a new trustee	Head 8	Appointments of a new trustee	Head 8	Repealed	Repealed	Repealed	Repealed
Attested copies	Attested copies	Head 9	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Bank notes	Bank notes	Head 10	Bank notes	Head 10	Bank notes	Head 10	Repealed	Repealed	Repealed	Repealed

Appendix V Cont'd 1

Head of charge	1968 Stamp Amendment Ordinance (Final column from Appendix IV)	1968 category	1973 Stamp Amendment Ordinance	1973 category	1977 Stamp Amendment Ordinance	1977 category	1978 Stamp Amendment Ordinance	1978 category	1981 Stamp Ordinance	1981 category
Bills of exchange and promissory notes	Bills of exchange and promissory notes	Head 11	Bills of exchange and promissory notes	Head 11	Bills of exchange and promissory notes	Head 11	Repealed	Repealed	Repealed	Repealed
Bills of lading	Bills of lading	Head 12	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Bonds concerning respondentia and bottomry	Bonds concerning respondentia and bottomry	Head 13	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Bonds	Bonds	Head 14	Bonds	Head 14	Bonds	Head 14	Repealed	Repealed	Repealed	Repealed
Certificates to practise	Certificates to practise	Head 15	Certificates to practise	Head 15	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Charter parties	Charter parties	Head 16	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Compradore orders	Compradore orders	Head 17	Compradore orders	Head 17	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Cashier orders	Cashier orders	Head 18	Cashier orders	Head 18	Cashier orders	Head 18	Repealed	Repealed	Repealed	Repealed
Contract notes	Contract notes	Head 18A	Contract notes	Head 18A	Contract notes	Head 18A	Contract notes	Head 18A	Repealed	Repealed
Conveyances	Conveyances	Head 19	Conveyances	Head 19	Conveyances	Head 19	Conveyances	Head 19	Repealed	Repealed
Conveyances made for the purpose of effectuating the appointment of a new trustee	Conveyances made for the purpose of effectuating the appointment of a new trustee	Head 20	Conveyances made for the purpose of effectuating the appointment of a new trustee	Head 20	Conveyances made for the purpose of effectuating the appointment of a new trustee	Head 20	Repealed	Repealed	Repealed	Repealed
Conveyances of any kind not specially described	Conveyances of any kind not specially described	Head 21	Conveyances of any kind not specially described	Head 21	Conveyances of any kind not specially described	Head 21	Repealed	Repealed	Repealed	Repealed

Appendix V Cont'd 2

Head of charge	1968 Stamp Amendment Ordinance (Final column from Appendix IV)	1968 category	1973 Stamp Amendment Ordinance	1973 category	1977 Stamp Amendment Ordinance	1977 category	1978 Stamp Amendment Ordinance	1978 category	1981 Stamp Ordinance	1981 category
Declarations or revocations of trust	Declarations or revocations of trust	Head 22	Declarations or revocations of trust	Head 22	Declarations or revocations of trust	Head 22	Repealed	Repealed	Repealed	Repealed
Deeds	Deeds	Head 23	Deeds	Head 23	Deeds	Head 23	Repealed	Repealed	Repealed	Repealed
Dividend warrants	Dividend warrants	Head 24	Dividend warrants	Head 24	Dividend warrants	Head 24	Repealed	Repealed	Repealed	Repealed
Duplicates or counterparts	Duplicates or counterparts	Head 25	Duplicates or counterparts	Head 25	Duplicates or counterparts	Head 25	Duplicates or counterparts	Head 25	Duplicates or counterparts	Head 4
Exchanges	Exchanges	Head 26	Exchanges	Head 26	Exchanges	Head 26	Exchanges	Head 26	Repealed	Repealed
Exchange contract cancellation notes	Exchange contract cancellation notes	Head 27	Exchange contract cancellation notes	Head 27	Exchange contract cancellation notes	Head 27	Repealed	Repealed	Repealed	Repealed
Foreclosure orders	Foreclosure orders	Head 28	Foreclosure orders	Head 28	Foreclosure orders	Head 28	Foreclosure orders	Head 28	Repealed	Repealed
Foreign attachment bonds	Foreign attachment bonds	Head 29	Foreign attachment bonds	Head 29	Foreign attachment bonds	Head 29	Repealed	Repealed	Repealed	Repealed
Godown warrants	Godown warrants	Head 30	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Hong Kong bearer instruments	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Hong Kong bearer instruments	Head 3
Hong Kong stock	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Hong Kong stock	Head 2
Immovable property situated in Hong Kong	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Not enacted	Immovable property situated in Hong Kong	Head 1

Appendix V Cont'd 3

Head of charge	1968 Stamp Amendment Ordinance (Final column from Appendix IV)	1968 category	1973 Stamp Amendment Ordinance	1973 category	1977 Stamp Amendment Ordinance	1977 category	1978 Stamp Amendment Ordinance	1978 category	1981 Stamp Ordinance	1981 category
Import or export declarations	Import or Export Declarations	Head 31	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Leases	Leases	Head 32	Leases	Head 32	Leases	Head 32	Leases	Head 32	Repealed	Repealed
Letters of allotment	Letters of allotment	Head 33	Letters of allotment	Head 33	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Letters of hypothecation	Letters of hypothecation	Head 34	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Letters patent	Letters patent	Head 35	Letters patent	Head 35	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Marketable securities issued in the colony	Marketable securities issued in the colony	Head 36	Marketable securities issued in the colony	Head 36	Marketable securities issued in the colony	Head 36	Marketable securities issued in the colony	Head 36	Repealed	Repealed
Mortgages	Mortgages	Head 37	Mortgages	Head 37	Mortgages	Head 37	Repealed	Repealed	Repealed	Repealed
Notarial acts	Notarial acts	Head 38	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Notes of protest of a bill of exchange	Notes of protest of a bill of exchange	Head 39	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Partition deeds	Partition deeds	Head 40	Partition deeds	Head 40	Partition deeds	Head 40	Partition deeds	Head 40	Repealed	Repealed
Partnership instruments	Partnership instruments	Head 41	Partnership instruments	Head 41	Partnership instruments	Head 41	Repealed	Repealed	Repealed	Repealed
Policies of insurance	Policies of insurance	Head 42	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Powers of attorney for any purpose	Powers of attorney for any purpose	Head 43	Powers of attorney for any purpose	Head 43	Powers of attorney for any purpose	Head 43	Repealed	Repealed	Repealed	Repealed
Servant security bonds	Servant security bonds	Head 45	Servant security bonds	Head 45	Servant security bonds	Head 45	Repealed	Repealed	Repealed	Repealed

Appendix V Cont'd 4

Head of charge	1968 Stamp Amendment Ordinance (Final column from Appendix IV)	1968 category	1973 Stamp Amendment Ordinance	1973 category	1977 Stamp Amendment Ordinance	1977 category	1978 Stamp Amendment Ordinance	1978 category	1981 Stamp Ordinance	1981 category
Settlements	Settlements	Head 46	Settlements	Head 46	Settlements	Head 46	Repealed	Repealed	Repealed	Repealed
Settlements executed in pursuance of a duly stamped agreement	Settlements executed in pursuance of a duly stamped agreement	Head 47	Settlements executed in pursuance of a duly stamped agreement	Head 47	Settlements executed in pursuance of a duly stamped agreement	Head 47	Repealed	Repealed	Repealed	Repealed
Shares	Shares	Head 48	Shares	Head 48	Shares	Head 48	Shares	Head 48	Repealed	Repealed
Shippers book	Shippers book	Head 49	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed	Repealed
Telegraphic transfer advices	Telegraphic transfer advices	Head 50	Telegraphic transfer advices	Head 50	Telegraphic transfer advices	Head 50	Repealed	Repealed	Repealed	Repealed
Trademarks Vesting orders	Trademarks Vesting orders	Head 51 Head 52	Trademarks Vesting orders	Head 51 Head 52	Repealed Vesting orders	Repealed Head 52	Repealed Vesting orders	Repealed Head 52	Repealed Repealed	Repealed Repealed
Voluntary dispositions <i>inter</i> <i>vivos</i> of property	Voluntary dispositions <i>inter</i> <i>vivos</i> of property	Head 53	Voluntary dispositions <i>inter</i> <i>vivos</i> of property	Head 53	Voluntary dispositions <i>inter</i> <i>vivos</i> of property	Head 53	Voluntary dispositions <i>inter</i> <i>vivos</i> of property	Head 53	Repealed	Repealed

Note: Each head of charge might contain one or more taxable instrument(s). Only those Ordinances that effected changes to the heads of charge were presented.

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